

**I·C·A·C**

INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES



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**INVESTIGATION INTO THE  
AWARDING OF CONTRACTS  
BY EMPLOYEES OF THE  
FORMER NSW ROADS AND  
MARITIME SERVICES**

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**ICAC REPORT  
MAY 2022**

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NEW SOUTH WALES

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Speaker  
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Sydney NSW 2000

Mr President  
Mr Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act)  
I am pleased to present the Commission's report on its investigation into the awarding of contracts by  
employees of the former NSW Roads and Maritime Services.

I presided at the public inquiry held as part of this investigation.

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to s 78(2)  
of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely

A handwritten signature in black ink, reading 'P. McDonald'.

Patricia McDonald SC  
Commissioner

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# Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) examined whether, between July 2015 and February 2019, Samer Soliman and Jainesh (Jai) Singh, employees in the Heavy Vehicle Programs (HVP) Unit of the former NSW Roads and Maritime Services (RMS), partially and dishonestly exercised their official functions in relation to the awarding of contracts to Novation Engineering Pty Ltd (“Novation”) and AZH Consulting Pty Ltd (“AZH”). Novation was the company of Mr Soliman’s close friend, Stephen Thammiah, and AZH was the company of Ali Hamidi, a friend of both Mr Soliman and Mr Singh.

## Corrupt conduct findings

### Mr Soliman

The Commission found that Mr Soliman engaged in serious corrupt conduct by:

- between November 2015 and June 2016, misusing his position as manager of the RMS HVP Unit to arrange for six RMS contracts to be awarded to Novation, his friend’s company, namely the:
  - November 2015 contract for the procurement of 21 under-vehicle inspection cameras, for which Novation was paid \$45,780 by RMS
  - December 2015 contract to undertake mobile automatic number plate recognition (ANPR) technology trials and provide a scoping study, for which Novation was paid \$83,097 by RMS
  - February 2016 contract for a field trial and scoping study of thermal vehicle scanner technology, for which Novation was paid \$76,274 by RMS

- March 2016 contract for trialling of portable weigh scales, for which Novation was paid \$25,129.50 by RMS
- May 2016 contract for a field trial and scoping study of a vehicle dimension scanner, for which Novation was paid \$23,089 by RMS
- June 2016 contract for the procurement, field trial and scoping study for ruggedised tablets, for which Novation was paid \$92,345 by RMS

in each case doing so for the purpose of improperly benefiting Mr Thammiah and himself (chapter 3)

- between April and November 2016, misusing his position as RMS HVP Unit manager to obtain for Novation the exclusive NSW distributorship of the existing brand of portable weigh scales and parts used by RMS (PAT GmbH/static axle weigher (SAW)) (chapter 4)
- between January 2017 and August 2018, misusing his position as manager of the RMS HVP Unit to arrange for contracts to be awarded to AZH, his friend’s company, namely the:
  - January 2017 contract for a scoping study and trial of the Industrial Monitoring and Control Pty Ltd (IMC) thermal camera, for which AZH was paid \$31,900 by RMS
  - January 2017 contract for a field trial and scoping study of the SICK dimension scanner, for which AZH was paid \$31,900 by RMS
  - January 2017 contract for a field trial and scoping study for the TIRTL (infra-red traffic logger) and Optris thermal scanner, for which AZH was paid \$33,000 by RMS

- January 2017 contract for a field trial and scoping study for the TIRTL and LTI (Laser Technology Inc) dimension scanner, for which AZH was paid \$33,000 by RMS
- January 2017 contract for a field trial and scoping study for integration of the TIRTL and weigh in motion (WIM), for which AZH was paid \$30,800 by RMS
- April 2017 contract for trial and scoping study for Houston Radar technology, for which AZH was paid \$33,000 by RMS
- April 2017 contract for a two-phase report on heavy vehicle crash analysis, for which AZH was paid \$66,000 by RMS
- May 2017 contract for field trials and scoping study for thermal and cold cameras, for which AZH was paid \$99,000 by RMS
- July 2017 contract for trial of HAENNI portable scales, for which AZH was paid \$53,625 by RMS
- August 2017 contract for trial of PAT 10C III portable scales, for which AZH was paid \$53,625 by RMS
- December 2017 contract for trial and study of modern portable scales, for which AZH was paid \$241,175 by RMS
- March 2018 contract for in-ground thermal camera trial and study, for which AZH was paid \$179,259 by RMS
- June 2018 contract for modernising ITS field trials and study, for which AZH was paid \$230,890 by RMS
- August 2018 contract for trial and study of heavy vehicle avoidance, for which AZH was paid \$195,690 by RMS

in each case doing so for the purpose of improperly benefiting Mr Hamidi and knowing that he would also benefit financially through payments made to him by Mr Hamidi/AZH (chapters 5, 6 and 7)

- between September and November 2017, improperly exercising his public official functions in the tender process for the professional services contractor (PSC) panel in order to ensure that AZH was a winning tenderer and was appointed to that panel, when he:
  - manipulated the specifications of the request for tender for the PSC panel to favour AZH, by removing tender requirements he knew that AZH could

not satisfy and foregrounding requirements he knew that he could represent AZH as satisfying

- drafted AZH's tender submission for the PSC panel
- drafted a submission for AZH that was false and misleading in all material respects in its representations about AZH's experience and technical skills and included as examples of AZH's work two reports that he had himself entirely plagiarised from the work of genuine vendors
- appointed Mr Singh, a person he knew to be a close friend of Mr Hamidi, to convene the tender evaluation committee, knowing that AZH would be lodging a submission
- attended the tender evaluation on 30 October 2017, although he was not on the tender evaluation committee
- failed to make any declaration of a conflict of interest in relation to AZH (chapters 6 and 7)
- between 4 June 2017 and 9 August 2018, soliciting and receiving \$177,450 from Mr Hamidi in 13 payments as an inducement or reward for exercising his official functions to favour AZH and award the company multiple RMS contracts (chapter 7)
- between late October 2016 to at least the end of the 2016–17 financial year, misusing his position as manager of the RMS HVP Unit by engaging with Mr Thammiah in a deliberate scheme to make as much profit as possible for Novation from the supply of scales spare parts to RMS, which involved, among other things, causing the payment by RMS to Novation of 27 invoices to a total of over \$803,000 for scale parts, software and hardware knowing that such items would either not be supplied or, if supplied, would be subject to exorbitant mark-up by Novation (chapter 8)
- between approximately July and late October 2017, misusing his position as manager of the RMS HVP Unit by assisting Novation to be appointed to the Heavy Vehicle Maintenance (HVM) panel, including by ensuring criteria was included in the request for tender (RFT) that would enable Novation to tender and by assisting Mr Thammiah with Novation's tender submission, in order to continue to benefit from the money Novation would receive from RMS as a result of gaining work as an HVM panel member (chapter 9)

- on 17 October 2017, signing a conflict of interest declaration, in which he falsely declared that he had no actual, perceived or potential conflict of interest when endorsing the recommended appointment of Novation to the HVM panel (chapter 9)
- between January 2016 and October 2018, receiving cash payments totalling \$347,200 from Mr Thammiah in person, or via his own withdrawals from Novation's account, these payments representing the immediate financial advantage obtained by Mr Soliman from his joint enterprise with Mr Thammiah (chapter 10)
- misusing his position as manager of the RMS HVP Unit to favour Novation by manipulating RMS's processes for a tender worth over \$2 million for the procurement of 125 portable weigh scales (chapter 11)
- misusing his position as manager of the RMS HVP Unit to favour Novation by manipulating RMS's processes for a tender worth over \$7 million for the procurement of 425 portable weigh scales and 70 chargers (chapter 12).

## Mr Thammiah

The Commission found that Mr Thammiah engaged in serious corrupt conduct by:

- between 15 December 2015 and 18 June 2016, submitting eight invoices to RMS for payment for six contracts, namely the:
  - November 2015 contract for the procurement of 21 under-vehicle inspection cameras, for which Novation was paid \$45,780 by RMS
  - December 2015 contract to undertake mobile ANPR technology trials and provide a scoping study, for which Novation was paid \$83,097 by RMS
  - February 2016 contract for a field trial and scoping study of thermal vehicle scanner technology, for which Novation was paid \$76,274 by RMS
  - March 2016 contract for trialling of portable weigh scales, for which Novation was paid \$25,129.50 by RMS
  - May 2016 contract for a field trial and scoping study of a vehicle dimension scanner, for which Novation was paid \$23,089 by RMS

- June 2016 contract for the procurement, field trial and scoping study for ruggedised tablets, for which Novation was paid \$92,345 by RMS

in each case knowing, when he submitted the invoices, that he had not done, or would not do, most of the work, for which he invoiced and that Mr Soliman would use his position at RMS to dishonestly arrange for payment of the invoices (chapter 3)

- between 10 January and 16 May 2017, in agreement with Mr Soliman, creating 28 Novation invoices totalling just under \$836,000, and submitting these to RMS for payment, for which Novation received just over \$803,000, knowing that parts for which he invoiced would not be ordered from or supplied by International Road Dynamics (IRD), and/or that the prices charged were grossly inflated and knowing that Mr Soliman would use his position at RMS to cause payment of the invoices to benefit himself and Mr Soliman (chapter 8)
- on 6 October 2017, in agreement with Mr Soliman, submitting Novation's response to the RFT for the HVM panel knowing that Mr Soliman had used, and would continue to use, his position to favour Novation's appointment to the HVM panel, in the expectation that Novation would continue to profit from RMS business and that he would share in those profits with Mr Soliman (chapter 9)
- between January 2016 and October 2018, making cash payments, or enabling Mr Soliman to withdraw cash, to the total value of \$347,200 from Novation's accounts on account of Mr Soliman exercising his public official functions to improperly favour Novation in the awarding of RMS contracts (chapter 10)
- on 9 February 2018, in agreement with Mr Soliman, submitting a response to the RMS request for quotes (RFQ) for the procurement of 125 portable weigh scales knowing that Mr Soliman had misused his position as manager of the RMS HVP Unit to favour Novation in the tender process (chapter 11)
- in August 2018, in agreement with Mr Soliman, submitting a response to the RMS RFQ for the procurement of 425 portable weigh scales and 70 chargers knowing that Mr Soliman had misused his position as manager of the RMS HVP Unit to favour Novation in the tender process (chapter 12).

## Mr Hamidi

The Commission found that Mr Hamidi engaged in serious corrupt conduct by:

- between 7 February 2017 and 17 September 2018, submitting invoices for the:
  - January 2017 contract for a scoping study and trial of the IMC thermal camera, for which AZH was paid \$31,900 by RMS
  - January 2017 contract for a field trial and scoping study of the SICK dimension scanner, for which AZH was paid \$31,900 by RMS
  - January 2017 contract for a field trial and scoping study for the TIRTL and Optris thermal scanner, for which AZH was paid \$33,000 by RMS
  - January 2017 contract for a field trial and scoping study for the TIRTL and LTI dimension scanner, for which AZH was paid \$33,000 by RMS
  - January 2017 contract for a field trial and scoping study for integration of the TIRTL and WIM, for which AZH was paid \$30,800 by RMS
  - April 2017 contract for trial and scoping study for Houston Radar technology, for which AZH was paid \$33,000 by RMS
  - April 2017 contract for a two-phase report on heavy vehicle crash analysis, for which AZH was paid \$66,000 by RMS
  - May 2017 contract for field trials and scoping study for thermal and cold cameras, for which AZH was paid \$99,000 by RMS
  - July 2017 contract for trial of HAENNI portable scales, for which AZH was paid \$53,625 by RMS
  - August 2017 contract for trial of PAT 10C III portable scales, for which AZH was paid \$53,625 by RMS
  - December 2017 contract for trial and study of modern portable scales, for which AZH was paid \$241,175 by RMS
  - March 2018 contract for in-ground thermal camera trial and study, for which AZH was paid \$179,259 by RMS
  - June 2018 contract for modernising ITS field trials and study, for which AZH was paid \$230,890 by RMS

- August 2018 contract for trial and study of heavy vehicle avoidance, for which AZH was paid \$195,690 by RMS

in each case knowing when he did so, that he had not done, or would not do, most of the work for which he invoiced and that Mr Soliman would use his position at the RMS to dishonestly arrange for payment of the invoices (chapters 5, 6 and 7)

- on 25 October 2017, in agreement with Mr Soliman, lodging a tender submission with RMS for inclusion on the PSC panel, knowing that Mr Soliman had drafted AZH's submission and that he had used, and would continue to use, his position to favour AZH's appointment to the PSC panel (chapters 6 and 7)
- between 4 June 2017 and 9 August 2018, paying Mr Soliman \$177,450 in 13 payments as an inducement or reward for Mr Soliman exercising his official functions to favour AZH and award the company multiple RMS contracts (chapter 7).

## Mr Singh

The Commission found that Mr Singh engaged in serious corrupt conduct by:

- in October 2017, improperly assisting AZH to be appointed to the PSC panel by recommending AZH's appointment, knowing that its tender submission contained false and misleading information about the experience and technical skill of AZH and Mr Hamidi, and deliberately failing to declare his conflict of interest arising from his friendship with Mr Hamidi (chapters 6 and 7)
- between February and March 2018, partially and dishonestly exercising his official functions by recommending Novation as the winning tenderer for a contract valued at over \$2 million and declaring that he was not aware of any situation that might lead to an actual or perceived conflict of interest, or which might affect him carrying out his functions both fairly and in RMS's best interest, when he knew that the friendship between Mr Soliman and Mr Thammiah was such a situation (chapter 11).

## Section 74A(2) statements

Statements are made in this report pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons:



## Samer Soliman

- for the offence of fraud under s 192E of the *Crimes Act 1900* (“the Crimes Act”), for the offence of aiding and abetting Mr Thammiah in the commission of fraud offences under s 192E of the Crimes Act, and for the common law offence of misconduct in public office, in relation to his conduct between November 2015 and June 2016, in using his position at RMS to award six contracts to Novation and to dishonestly approve and cause payment by RMS of invoices submitted by Novation in relation to those contracts, which he knew to be false (chapter 3)
- for the offence of fraud under s 192E of the Crimes Act, for the offence of aiding and abetting Mr Hamidi in the commission of fraud offences under s 192E of the Crimes Act, and for the common law offence of misconduct in public office, arising from his conduct between January 2017 and August 2018, in using his position at RMS to award 14 contracts worth over \$1.3 million to AZH and dishonestly to approve and cause payment by RMS of invoices submitted by AZH for those contracts, which he knew to be false (chapters 5, 6 and 7)
- for the common law offence of misconduct in public office, arising from his conduct between September and November 2017 in partially and dishonestly involving himself in the tender process for the PSC panel and drafting AZH’s tender submission for the purpose of ensuring that AZH was a winning tenderer and was appointed to that panel (chapters 6 and 7)
- for the offence of corruptly soliciting and receiving benefits under s 249B(1) of the Crimes Act, between 4 June 2017 and 9 August 2018, in the total amount of \$177,450 (chapter 7)
- for an offence of giving false or misleading evidence in the public inquiry under s 87 of the ICAC Act in respect of evidence given on 5 June 2019 to the effect that he only made “formatting changes” to reports submitted by AZH to RMS (chapters 5 and 7)
- for fraud offences under s 192E of the Crimes Act, the offence of aiding and abetting Mr Thammiah in the commission of fraud offences under s 192E of the Crimes Act, and the common law offence of misconduct in public office, arising from his conduct, between late October 2016 to at least the end of the 2016–17 financial year, in using his position at RMS to approve \$810,000 worth of purchase orders (POs) in Novation’s favour and to dishonestly cause the payment by RMS of 27 invoices submitted by Novation to use up the funds available on those POs, which he knew to be false and/or grossly inflated (chapter 8)
- for the common law offence of misconduct in public office, arising from his conduct between approximately July and late October 2017, in misusing his position as manager of the RMS HVP Unit to assist Novation to be appointed to the HVM panel, in order to continue to benefit from the money Novation would receive from RMS as a result of gaining work as an HVM panel member (chapter 9)
- for an offence under s 87 of the ICAC Act for giving false or misleading evidence in the public inquiry in respect of his references to “we” in his WhatsApp communication with Mr Thammiah, to the effect that he only meant Mr Thammiah rather than the two of them when he said “we’ll have a full-time job for a few days submitting the Novation tender response” and that he meant RMS rather than the two of them when he said “I want Novation on this panel so we can continue procuring” (chapter 9)
- for an offence under s 87 of the ICAC Act for giving false or misleading evidence in respect of his evidence given in the public inquiry to the effect that when he said to Mr Thammiah in relation to the HVM panel that “I want Novation on this panel so we can continue procuring”, “we” was a reference to RMS, in the sense that it could “continue getting the parts that were urgently needed”, rather than to Novation, in the sense that it could continue to procure parts for supply to RMS at exorbitant prices (chapter 9)
- for an offence under s 249B(1)(a) of the Crimes Act of, between January 2016 and October 2018, corruptly soliciting and receiving benefits, and agreeing to receive benefits in the future, on account of using his position in RMS to award contracts to Novation and otherwise to favour Novation in relation to the affairs or business of RMS (chapter 10)
- for the common law offence of misconduct in public office in partially and dishonestly favouring Novation to win the tender for the procurement by RMS of 125 scales (chapter 11)
- for offences under s 87 of the ICAC Act in respect of his evidence in the public inquiry:
  - that he had nothing to do with the 125 scales tender

- denying that he deliberately set the tender requirements for the 125 scales tender to suit Novation
- that when he said in a WhatsApp message “I’ll let you know if we’re \$2M richer in a few hours”, he meant he was happy if Mr Thammiah won the tender because they were so close (chapters 10 and 11)
- for the common law offence of misconduct in public office in partially and dishonestly favouring Novation to win the tender for the procurement by RMS of 425 scales and 70 chargers (chapter 12)
- for offences under s 87 of the ICAC Act in respect of his evidence in the public inquiry:
  - that he was not running the 425 scales tender by directing Alex Lee and that Mr Lee was running the tender
  - denying that he deliberately set the tender requirements to favour Novation
  - that David Jones was not part of the second tender because he did not want to be and not because Mr Soliman excluded him because he raised an issue with the first tender
  - that he believed it to be true when he informed Arnold Jansen by email on 29 June 2018 that a scoping study had been run “to assess all leading scales on the market”, which had “conclusively shown that the Swiss-made IRD scale is the clear winner in every key performance indicator” (chapter 12).

### Stephen Thammiah

- for fraud offences under s 192E of the Crimes Act and the offence of aiding and abetting Mr Soliman in the commission of misconduct in public office, in relation to his conduct between 15 December 2015 and 18 June 2016, in submitting eight invoices to RMS totalling over \$345,000, which he knew to be false, in the knowledge that Mr Soliman would use his position at RMS to dishonestly approve payment of those invoices to obtain a financial advantage for Novation (chapter 3)
- for fraud offences under s 192E of the Crimes Act and the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office, in relation to his conduct between 10 January and 16 May 2017,

in creating and submitting to RMS for payment, in agreement with Mr Soliman, 28 Novation invoices totalling just under \$836,000, knowing that parts for which he invoiced would not be ordered from or supplied by IRD, and/or that the prices charged were grossly inflated, and knowing that Mr Soliman would use his position at RMS to cause payment of the invoices to benefit himself and Mr Soliman (chapter 8)

- for the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office, arising from his conduct between 25 September and 6 October 2017, in providing Novation’s draft tender submission to the RFT for the HVM panel to Mr Soliman, submitting Novation’s tender submission to the RFT to RMS with knowledge of Mr Soliman’s preferential treatment, and assisting the acts which led to the commission of an offence by Mr Soliman (chapter 9)
- for an offence under s 87 of the ICAC Act for giving false or misleading evidence in the public inquiry on 18 October 2019, when he gave evidence to the effect that he made a suggestion to Mr Soliman that they should switch to using Wickr<sup>1</sup> for anonymity because, while he believed Mr Soliman had not “breached probity” and was acting appropriately in helping Mr Thammiah with Novation’s tender submission, he wanted to see whether Mr Soliman would take up his suggestion as a way of testing whether he was in fact acting appropriately (chapter 9)
- for an offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between January 2016 and October 2018, corruptly giving a benefit to Mr Soliman on account of Mr Soliman showing favour to Mr Thammiah and Novation in relation to the affairs or business of RMS, or the receipt of or expectation of which would tend to influence Mr Soliman to show favour to Mr Thammiah and Novation in relation to the affairs or business of RMS (chapter 10)
- for the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office in partially and dishonestly favouring Novation to win the tender for the procurement by RMS of 125 scales (chapter 11)

<sup>1</sup> An instant messaging application that allows users to exchange end-to-end encrypted and content-expiring messages, including photos, videos and file attachments.

- for the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office in partially and dishonestly favouring Novation to win the tender for the procurement by RMS of 425 scales and 70 chargers (chapter 12)

## Ali Hamidi

- for offences of fraud under s 192E of the Crimes Act, and for the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office, in relation to Mr Soliman's conduct between January 2017 and August 2018 in using his position at RMS to award 14 contracts to AZH and to dishonestly approve and cause payment by RMS of invoices submitted by AZH in relation to those contracts, which he knew to be false, and which totalled over \$1.3 million (chapters 5, 6 and 7)
- for the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office, in relation to Mr Soliman's conduct between September and November 2017 in partially and dishonestly involving himself in the tender process for the PSC panel and drafting AZH's tender submission, for the purpose of ensuring that AZH was a winning tenderer and was appointed to that panel (chapters 6 and 7)
- for the offence of corruptly giving a benefit to Mr Soliman as an inducement or reward, under s 249B(2) of the Crimes Act (chapter 7).

## Corruption prevention

Chapter 13 of this report sets out the Commission's review of the corruption risks identified during its investigation. The corrupt conduct of Mr Soliman and, in particular, his deliberate manipulation of RMS's procurement processes, was allowed or encouraged by factors that can be grouped into four categories:

- Mr Soliman's conflicts of interest were not reported to RMS management (despite the fact that another RMS officer knew about them)
- Mr Soliman had a significant level of control of relevant RMS procurement processes and used this control to completely undermine their integrity for the benefit of Novation and AZH
- Mr Soliman's ability to control or manage the relevant procurement processes was in part facilitated by substantially inadequate procurement

governance, which resulted in opportunities to stop his corrupt activity being missed

- Mr Soliman was subject to limited managerial oversight, which also resulted in missed opportunities to stop his corrupt conduct.

Accordingly, the Commission makes the following seven recommendations:

### Recommendation 1

That Transport for NSW (TfNSW) updates and reissues its online training and other awareness-raising products relating to conflicts of interest, fraud and corruption prevention and procurement. TfNSW should also consider delivering customised training to staff who manage high-risk programs and budgets.

### Recommendation 2

That TfNSW:

- reviews all supplier panels created or used by the former Compliance and Regulatory Services (CaRS) Division (that remain in existence) with a view to assessing compliance with past and current procurement policy, any undisclosed conflicts of interest or similarities with the conduct identified in this investigation
- considers mandating additional oversight or involvement by agency procurement experts in the formation and maintenance of all TfNSW supplier panels.

### Recommendation 3

That TfNSW considers requiring use of a secure, electronic system for seeking quotations from suppliers. The system should prevent staff from opening RFQ responses before the due date.

### Recommendation 4

That TfNSW revises its supplier due diligence procedures. This could include but not be limited to:

- enhancing the suite of checks that are performed by Transport Shared Services when adding new suppliers to the vendor master file
- identifying new suppliers that may not have the necessary credentials, capability or experience
- strengthening procedures for conducting referee checks.

## Recommendation 5

That TfNSW develops a data analytics program aimed at detecting suspicious conduct including but not necessarily limited to:

- order-splitting
- recently registered suppliers or suppliers that are not registered for GST
- consecutively numbered invoices
- misuse of delegations
- POs associated with budgets not controlled by the approver
- goods and services that are receipted shortly after the PO has been raised.

## Recommendation 6

That TfNSW develops a register of heavy vehicle enforcement assets. This register should be used as the basis for future procurement strategies and decisions to replace or maintain assets.

## Recommendation 7

That TfNSW performs a “lessons learnt” exercise or audit based on the findings from this investigation. This could include an examination of:

- whether the weaknesses identified in the HVP Unit exist elsewhere in TfNSW
- business units that lack adequate supervision
- procurement governance and reporting
- the need for a new corruption risk assessment
- substantial procurements that proceeded without a procurement strategy

- whether the scope of responsibility and resourcing of the procurement advisory function is sufficient
- whether the devolved procurement framework provides sufficient assurance regarding value for money and compliance.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to TfNSW and the responsible minister.

As required by s 111E(2) of the ICAC Act, TfNSW must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations, whether it proposes to implement any plan of action in response to the recommendations and, if so, details of the proposed plan of action.

In the event a plan of action is prepared, TfNSW is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission’s website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

## Recommendation that this report be made public

Pursuant to s 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of a House of Parliament to make the report public, whether or not Parliament is in session.



# Chapter 1: The Commission's Investigation

This investigation by the NSW Independent Commission Against Corruption ("the Commission") concerned whether, between July 2015 and February 2019, NSW Roads and Maritime Services (RMS), employees Samer Soliman and Jainesh (Jai) Singh partially and dishonestly exercised their official functions in relation to the awarding of RMS contracts to Novation Engineering Pty Ltd ("Novation") and AZH Consulting Pty Ltd ("AZH"). This chapter sets out some background information concerning the investigation.

## How the investigation came about

By letter dated 16 February 2018, Ken Kanofski, chief executive of the then RMS, which is now part of Transport for NSW (TfNSW), made a report to the Commission pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). This section of the ICAC Act requires the principal officer of a public authority to report to the Commission any matter which the person suspects on reasonable grounds concerns or may concern corrupt conduct.

The report concerned an anonymous complaint alleging that Mr Soliman was providing contract work to the company of his close friend, Stephen Thammiah. Mr Soliman was the manager of the Heavy Vehicle Programs (HVP) Unit within the Compliance Operations Branch of the Compliance and Regulatory Services Division ("CaRS") of RMS. Covert enquiries conducted by RMS indicated that, between 25 November 2015 and 29 March 2017, Mr Soliman had engaged and approved payments of about \$900,000 to Mr Thammiah's company, Novation.

The Commission commenced a preliminary investigation in March 2018. By May 2018, a review of electronic records provided to the Commission by RMS indicated that the Novation invoices submitted to RMS were addressed to both Mr Soliman and Mr Singh, a business systems analyst in the HVP Unit who reported to

Mr Soliman. The records revealed that a further payment of \$240,000<sup>2</sup> had been made by RMS to Novation in March 2018.

The Commission found evidence that, from January 2018, Mr Soliman had been involved in the proposed procurement of approximately 550 portable weigh scales at an estimated cost of \$7 million. The project was not fully funded for the 2017–18 financial year and, in late January 2018, Mr Soliman initiated a smaller tender process to procure 125 scales. Novation was one of three companies to submit tenders and, on 16 March 2018, it was advised that its tender submission for \$2.1 million had been successful. In June 2018, RMS made two payments of \$1.058 million each to Novation.

By July 2018, the records reviewed by the Commission suggested that Mr Soliman was involved in managing the next phase of the procurement of portable weigh scales at an estimated cost of approximately \$4.7 million. Those records also suggested that he was actively exploring ways of bypassing the normal tender processes in order to directly engage Novation.

One of the Commission's principal functions, as specified in s 13(1)(a) of the ICAC Act, is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- (i) *corrupt conduct, or*
- (ii) *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
- (iii) *conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur*

<sup>2</sup> This figure, as with all monetary amounts referred to in this report (unless otherwise indicated), was inclusive of GST.

The role of the Commission is explained in more detail in Appendix 1.

The matters brought to the Commission's attention concerned potentially significant and widespread breaches of procurement rules by a senior public official and his direct report and involved a substantial amount of public money. In these circumstances, the Commission decided that it was in the public interest to conduct a fuller investigation to establish whether corrupt conduct had occurred and/or may be occurring, the extent of any corrupt conduct, and whether there were corruption prevention issues that needed to be addressed.

## Conduct of the investigation

During the course of the investigation, the Commission:

- executed search warrants on the residences of Mr Soliman and Mr Thammiah
- obtained documents from various sources by issuing 72 notices under s 22 of the ICAC Act requiring the production of documents
- interviewed and/or took statements from numerous persons
- conducted 11 compulsory examinations
- forensically examined mobile telephones seized during search warrants and extracted thousands of relevant WhatsApp messages between Mr Soliman and Mr Thammiah over the period under investigation.

The investigation revealed that, between April and November 2016, Mr Soliman was in regular communication with representatives of Canadian company International Road Dynamics (IRD), suppliers of the enforcement weigh in motion (WIM) and portable weigh scales and accessories then used by RMS. The main focus of Mr Soliman's communication was the recommendation that IRD replace its NSW distributor, Electronic Load Weighing Company of Australia Pty Ltd (ELWC), with another vendor because of recent serious performance issues that were having an unacceptable impact on RMS business. One of the vendors Mr Soliman recommended to IRD was Novation. In October 2016, ELWC ceased its business arrangement as a supplier and maintainer for RMS and, in November 2016, Novation took over the NSW distributorship of IRD portable weigh scales and parts.

Evidence obtained by the Commission tended to confirm that from the time Novation became the sole NSW distributor of IRD's products, Mr Soliman sought funding for, and managed the procurement of scales to replace, all 550 portable weigh scales in RMS's fleet. The evidence

also tended to indicate that procurement processes were managed and manipulated, both directly and indirectly by Mr Soliman, to favour Novation in return for receiving payments from Mr Thammiah.

Messages extracted from Mr Soliman's mobile telephone, which had been seized by Commission officers when executing a search warrant, indicated that he was in a WhatsApp chat group that included Ali Hamidi and Mr Singh. Mr Hamidi effectively controlled AZH Consulting Pty Ltd ("AZH"). Mr Soliman had arranged for that company to be added to the RMS database as a vendor.

In early November 2018, RMS advised that, between January 2017 and August 2018, AZH had been awarded 17 contracts worth a total of \$1.45 million. Evidence obtained by the Commission tended to indicate that these contracts had been awarded contrary to RMS procurement rules and the agency's conflict of interest policy. The Commission therefore extended the scope of its investigation to include whether Mr Soliman and Mr Singh had engaged in corrupt conduct in relation to the awarding of contracts to AZH since approximately November 2016.

In December 2018, Mr Hamidi approached the Commission through his lawyer, to assist the Commission's investigation by providing evidence and making significant admissions against interest. Mr Hamidi provided evidence that tended to indicate that Mr Soliman and Mr Hamidi were involved in a scheme in which Mr Soliman awarded RMS contracts to AZH and authorised payment for work in the nature of field trials and scoping studies when that work was either not done at all, or if done, was completed by Mr Soliman himself.

The evidence provided by Mr Hamidi indicated that Mr Hamidi had made regular cash payments to Mr Soliman during the period in which AZH was awarded contracts by Mr Soliman.

## The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry, for the purpose of furthering its investigation. In making that determination, the Commission had regard to the following matters:

- cogent evidence had been obtained in the course of the investigation indicating the likelihood of corrupt conduct
- the public interest in exposing corrupt conduct that affects public authorities, particularly where those public authorities are involved in protection

of the health and safety of NSW road users and responsible for spending significant amounts of public money on heavy vehicle enforcement programs designed to protect the public

- the allegations were serious and involved a senior public official who exercised a considerable amount of discretion and autonomy in his dealings with contractors
- the alleged corrupt conduct took place over an extended period of time and involved contracts with a total value of nearly \$12 million
- the conduct was alleged to have occurred notwithstanding the existence of policies, procedures and processes that might have been expected to minimise conduct of the type alleged
- the Commission's investigation had identified that Mr Soliman had been careful to conceal the nature and extent of his relationship with Novation and AZH, and his involvement in the procurement processes in which they were awarded contracts, from RMS (a public inquiry at which Mr Soliman and others could be compelled to answer questions provided an effective means of pursuing this matter and exposing the extent of Mr Soliman's wrongdoing and that of others involved)
- while there was a risk to the reputation of Mr Soliman and other witnesses called before the public inquiry, that risk was not undue in the light of the seriousness of the allegations, the cogency of the evidence then available to the Commission, and the public interest in exposing conduct of the kind alleged
- the prospect that conducting a public inquiry may encourage the reporting of other instances of similar conduct that highlight inadequacies in procurement processes and assist in the promotion of best practices.

The public inquiry commenced on 20 May 2019 and was conducted over 26 days in a number of tranches in June, August and October 2019. Evidence was taken from 10 witnesses. Commissioner Patricia McDonald SC presided over the public inquiry. Georgina Wright was Counsel Assisting the Commission.

The day the public inquiry resumed in August 2019, the Commission obtained access, using newly acquired updated software, to a previously locked telephone seized from Mr Thammiah's home in October 2018. This enabled the extraction of several thousand WhatsApp messages between Mr Thammiah and Mr Soliman over the period from 24 May 2017 to 6 July 2018. These messages evidenced the planning and execution of major elements of the scheme between Mr Soliman and Mr Thammiah

to manipulate RMS procurement processes and secure lucrative contracts for Novation and their arrangement to split Novation's profits between them. The public inquiry was adjourned to enable the Commission to review this material. It resumed in mid-October 2019 and proceeded for six further hearing days, concluding on 30 October 2019.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying the findings and recommendations that the Commission could make based on the evidence. These submissions were provided to relevant parties on 7 February 2020. The Commission's Corruption Prevention Division also prepared submissions concerning relevant procurement strategies, policies and practices.

By the end of March 2020, submissions in response were received on behalf of Transport for NSW (TfNSW), Mr Hamidi, Mr Singh, Mr Thammiah and Mr Soliman. On 6 April 2020, parties were invited to make cross-party submissions. The last cross-party submission was received on 24 April 2020 and submissions in reply from Counsel Assisting were provided to the Commission on 11 May 2020. All submissions have been taken into account in preparing the report.

The Commission's approach to submissions of affected persons is set out in Appendix 3 to this report.

## RMS HVP Unit

RMS was established on 1 November 2011 under s 46 of the *Transport Administration Act 1988* to replace the Roads and Traffic Authority (RTA). It ceased to exist as a legal entity with effect from 1 December 2019, pursuant to the *Transport Administration Amendment (RMS Dissolution) Act 2019*, when all of its functions, assets, rights and liabilities were transferred to TfNSW. At all relevant times for the purposes of the matters investigated by the Commission, RMS was a public authority for the purposes of the ICAC Act and its employees were public officials for the purposes of the ICAC Act.

One of the functions of RMS was to enforce heavy vehicle compliance with road transport laws in relation to roadworthiness and safety, including mass and dimension limits. Heavy vehicles (defined under the *Road Transport Act 2013* as any motor vehicle or trailer weighing more than 4.5 tonnes) pose special risks to road infrastructure and to the more than five million drivers using roads in NSW who may interact with them.

The principal purpose of the HVP Unit, which was located within CaRS at RMS, was to deliver and operate regulatory systems and infrastructure to manage heavy vehicle compliance.

RMS inspectors checked heavy vehicle compliance with road safety rules, at both scheduled and random times, at fixed roadside sites around the state or using mobile mass management equipment, including portable weigh scales.

During the period of time the subject of the Commission's investigation, approximately 278 inspectors around the state carried out heavy vehicle inspections. Those inspections primarily involved measuring vehicle weight and dimensions, intercepting overloaded or insecurely loaded vehicles, and checking for driver fatigue. In 2018, nearly 10% of all heavy vehicle breach notices issued were for weight breaches.

Key equipment used by RMS inspectors was portable weigh scales that they carried in their vehicles to check for overweight vehicles. Six scales were needed for each vehicle. By the beginning of 2016, RMS had a fleet of approximately 550 scales. The HVP Unit was responsible for the purchase of portable weigh scale assets, and for managing their maintenance and certification.

The Commission's investigation focused on the awarding of multiple contracts for scoping studies and field trials by Mr Soliman, to the companies of his friends, Mr Thammiah and Mr Hamidi. Between November 2015 and August 2018, Novation and AZH were awarded contracts to procure equipment, and conduct studies and trials worth just over \$345,000 and \$1.31 million respectively, despite the negligible budget for this sort of work within the HVP Unit.

The Commission's investigation also focused on Mr Soliman's involvement in the HVP Unit's procurement in 2018 of 550 portable weigh scales to replace the entire RMS fleet. Novation was the successful tenderer for both supply contracts, which were worth a total of \$9.5 million.

In addition, the Commission investigated the propriety of the multiple contracts awarded to Novation out of the HVP Unit's modest maintenance budget between January 2017 and April 2018, for the supply of spare parts for portable weigh scales that were about to be replaced. The total value of the maintenance contracts awarded to Novation over this period was in excess of \$1.043 million.

## Principal persons of interest

### Mr Soliman

Mr Soliman commenced employment with the RTA on 10 January 2011 in the role of systems strategy manager in the then Compliance and Enforcement Branch. He was appointed manager of the HVP Unit on 17 February 2014 and occupied this position until his suspension following the Commission's execution of a search warrant at his

residence on 18 October 2018. Mr Soliman's employment with RMS was terminated for serious misconduct with effect from 26 February 2019.

Prior to joining the RTA, Mr Soliman worked at Optus as a system administrator/technical consultant. He joined Optus in 2005 as a senior mobile technical support representative and worked there at the same time as Mr Singh, Mr Thammiah and Mr Hamidi.

As is demonstrated in the body of this report, Mr Soliman was not a credible witness. The Commission does not accept his evidence unless it is an admission against interest or is corroborated by other reliable evidence.

### Mr Singh

Mr Singh met Mr Soliman in 2007 at Optus, when Mr Singh started in mobile technical support and was in Mr Soliman's team. Mr Singh's position at Optus was made redundant in late 2013.

Mr Singh was recruited by Mr Soliman to the position of business systems analyst in the HVP Unit in 2014 and reported to him for the duration of his employment at RMS. He was suspended from duty with effect from 26 March 2019 following the commencement of an internal disciplinary investigation into a number of allegations of misconduct relevant to the Commission's investigation. His employment with RMS was terminated with effect from 16 May 2019.

The Commission accepts Mr Singh as a largely credible witness who made appropriate concessions and appeared genuine in his attempts to assist the Commission with his evidence.

### Mr Thammiah

Mr Thammiah was the sole director, office holder and shareholder of Novation, which was registered as a company on 29 September 2015.

Mr Thammiah completed his HSC in 2001; the same year and at the same school as Mr Soliman, which is where they met. Mr Thammiah commenced a computer science degree at the University of Western Sydney before transferring to the University of NSW for a year to study telecommunications engineering, and then to Macquarie University, which he left in 2009, having failed to complete his degree. He obtained a diploma of project management from the University of New England in 2009–10.

Mr Thammiah worked part-time at Optus from 2007, while studying, and full-time from the end of 2009. He occupied the role of project manager at Optus from 2011 until his position was made redundant in 2014.



Mr Thammiah was not a credible witness. The Commission does not accept his evidence unless it is an admission against interest or is corroborated by other reliable evidence.

### **Mr Thammiah's mental health issues and memory problems**

It was asserted in submissions on Mr Thammiah's behalf that Mr Thammiah had mental health issues and that these affected his evidence.

However, at no time during the Commission's investigation of this matter, including during the public inquiry and subsequent submissions process, did Mr Thammiah provide any objective or expert evidence of a medically diagnosed mental health issue that adversely affected his memory. Mr Thammiah claimed in evidence that he had a medically diagnosed problem, "but I don't know how much of that relates to memory but I believe it does". He conceded he had no specific memory-related medical diagnosis.

The Commission accepts that Mr Thammiah may have suffered from mental health issues on an ongoing basis since his later high school years and that he suffered a significant life event in May or June 2016, when he separated from his wife. However, the Commission is not satisfied that any mental health condition that Mr Thammiah may have suffered deprived him of the capacity to distinguish right from wrong or adversely affected his memory.

In addition, as submitted by Counsel Assisting, Mr Thammiah's credibility was in issue in the proceedings and he had an obvious self-serving motive to feign memory problems. Further, Mr Thammiah's evidence about the extent of his recollection of events was not consistent. While he was able to recall some matters in considerable detail, when answers might involve him incriminating himself, he exhibited a pattern of claiming memory loss.

In reaching this conclusion, the Commission also takes into account the evidence contained in the thousands of WhatsApp messages between May 2017 and October 2018 between Mr Thammiah and Mr Soliman (discussed later in this report). In these messages, Mr Thammiah's communication strongly indicates that, at the time of his dealings with RMS, he acted with a clear appreciation of his own wrongdoing and of impropriety on Mr Soliman's part, he was motivated by the pursuit of profit, and he acted deceitfully in an attempt to keep his and Mr Soliman's conduct from being discovered.

### **Mr Hamidi**

AZH was registered as a company on 10 November 2016. The company's registered office and place of business was the residence of Mr Hamidi and his wife, Zoe Hamidi, and its sole director and shareholder was Ms Hamidi.

In 2005, Mr Hamidi commenced working at Optus at the age of 19. He started in customer service, moved into technical support, became a manager, then a service improvement analyst, and finally a reporting and insights analyst before his position was made redundant in March 2018. Mr Hamidi first met Mr Soliman at Optus in 2006, when he worked with him in mobile technical support for one or two years, before Mr Soliman moved on to an engineering role with Optus and then left to join what was then the RTA. Mr Hamidi also met Mr Singh at Optus.

The Commission considers that Mr Hamidi was a generally truthful witness, who did not attempt to embellish his evidence and was willing to give evidence against his own interest. Mr Hamidi's evidence, as to the arrangement in place between himself and Mr Soliman for the creation of AZH documents and their submission to RMS, is consistent with the available documentary evidence. The Commission also finds that he gave consistent and credible evidence of events under questioning by Counsel Assisting and the legal representatives of a number of parties during the public inquiry.

Ms Hamidi was the sole director and shareholder of AZH. In assessing what, if any, role she may have had in arrangements between her husband and Mr Soliman, the Commission accepts the evidence given consistently by Mr Hamidi that he would never put his wife in a position where she was knowingly involved in unethical or illegal conduct. While he made her the sole director and bank account signatory for AZH, asked her to sign AZH's emails, AZH tax returns, AZH quotes and tender submissions, and the deed of arrangement with RMS in relation to the professional services contactor (PSC) panel, and requested that she withdraw large sums of money in cash for him, the Commission is satisfied that she had no knowledge of the details of these matters and trusted her husband.

Repeated submissions and criticisms were made on behalf of Mr Soliman that Ms Hamidi was not called to give evidence at the public inquiry. This was a matter for the Commission and the submissions made on Mr Soliman's behalf did not identify any matter on which her evidence might have been relevant to or able to assist Mr Soliman's interests.

## Chapter 2: Friends, conflicts of interest and the introduction of Novation

### Friendships

The principal persons of interest – Mr Soliman, Mr Singh, Mr Thammiah and Mr Hamidi – knew each other to varying degrees prior to their involvement with RMS. They had all worked at Optus at the same time – although not necessarily in the same section – before Mr Soliman left that organisation at the end of 2010 to join what was then the RTA. Mr Soliman and Mr Thammiah were particularly close and longstanding friends from high school and Mr Singh and Mr Hamidi formed a close friendship during their time working together at Optus. Mr Singh, Mr Hamidi and Mr Thammiah had their friendship with Mr Soliman in common and it was through him that their social circles intersected.

The Commission is satisfied that Mr Soliman's closest friend during the period under investigation – that is, between 2015 and 2019 – was Mr Thammiah. In 2016, Mr Thammiah separated from his wife and came to rely on his friendship with Mr Soliman, who helped him through a time he described as "quite traumatic". Mr Thammiah gave evidence that, as a consequence of his separation from his wife, he spent considerably more time at Mr Soliman's house and became "very much dependent on him". Mr Thammiah described Mr Soliman as his best friend.

While not as close as his friendship with Mr Thammiah, Mr Soliman agreed he had a friendship with Mr Hamidi. Mr Hamidi gave evidence that it was a close friendship.

Mr Singh and Mr Hamidi became friendly with each other through their mutual friendship with Mr Soliman. They lived close to each other and would ride-share into work at Optus together. They played soccer together for several years from about 2011 and on a more casual basis until 2018. They considered each other good, close friends.

While Mr Singh and Mr Hamidi both considered Mr Soliman a close friend, there is no evidence that either of them was friends with Mr Thammiah.

From approximately April 2016, Mr Soliman, Mr Singh, Mr Hamidi and other mutual friends were part of a WhatsApp chat group that called itself "Cockperts and cuckolds". The Commission obtained WhatsApp messages between the members of this group from Mr Soliman's mobile telephone for the period between April and August 2016. This communication, which consisted mainly of casual, crude banter and arrangements to get together for social events such as dinner or drinks or pizza after soccer training, indicated a close friendship between the group's members.

### Mr Soliman's and Mr Singh's roles and delegations

On 9 December 2010, when Mr Soliman accepted the offer of employment from the RTA as systems strategy manager, he signed a document confirming that he had read, understood and accepted the terms and conditions for the position and had been provided with the applicable RMS code of conduct and ethics, which he had read and agreed to comply with at all times.

In February 2014, Mr Soliman was the successful applicant for the position of manager, HVP Unit. In this position, he was responsible for managing a small team that was allocated the task of delivering road safety and heavy vehicle regulatory programs. He was allocated an annual operational budget of \$10 million on commencement.

The position description of this new role included developing "recommendations for system enhancement and consolidation to improve intelligence gathering, reduce costs and improve overall performance". Between January 2011 and late 2017, Paul Hayes supervised Mr Soliman. Mr Hayes gave evidence that Mr Soliman's

role was not only about “delivering things as they are from a machine point of view, it’s ‘can we do this better, can we do it cheaper, can we put in new ideas?’”.

The RMS Delegations Manual, issued on 12 November 2015 and updated in July 2016, recorded the delegations provided to RMS staff without which they had no lawful authority to exercise RMS functions. It also set out certain standards for delegates when exercising the delegation that attached to their position. These included the requirement to exercise the delegation consistently with all relevant laws and policies, including the code of conduct, and to act honestly and in good faith without any conflict of interest.

As at February 2016, in his position as unit manager, Mr Soliman held a delegation at level 4, even though the delegations manual indicated that this level was for section managers (at Mr Hayes’ level) and unit managers should have been on a lower, level 5 delegation. A level 4 delegation authorised the delegate, relevantly, to:

- purchase or enter general contracts to the value of between \$250,001 and \$500,000 (excluding inventory, goods and services for direct work and fixed assets)
- authorise the payment of monies in accordance with the terms of the contract for contracts worth more than \$250,000
- approve the purchase of inventory for replenishment for amounts greater than \$200,000
- approve, by acceptance of quotation, goods and services for direct works with a value greater than \$30,000
- in relation to minor physical works and services, and professional services contracts, invite and accept tenders up to a value of \$2 million in certain circumstances, and approve tender assessment committees.

A delegation of level 4 did not authorise the execution of formal contract documents or the approval of a procurement exemption or variation; for example, the waiver of a requirement for a public tender.

Relevantly, the Delegations Manual also stipulated that, for all purchases, the same delegate could not approve incurring expenditure as well as authorise payment. It was a further requirement that all procurement be undertaken in accordance with the following policies and manuals, which were available on the intranet:

- Procurement Policy PNI95
- Procurement Manual
- PN081 Purchasing and Invoice Policy.

## Mr Singh

On 8 October 2014, when he accepted the offer of employment from RMS, Mr Singh signed to confirm that he had read, understood and accepted the RMS terms and conditions of employment and had been provided with the applicable RMS code of conduct and ethics, which he had read and agreed to comply with at all times.

Mr Singh’s position had no delegation to approve or enter any contracts, accept quotations, authorise the expenditure of monies nor to approve invoices or authorise payment. Nevertheless, Mr Singh’s name appears as the “requester” on the majority of the purchase orders (POs) raised for contracts awarded to Novation and AZH over the period under investigation.

Mr Singh told the Commission that the requester’s role was merely to complete the details on the PO form and sign it. Being the requester did not make him the project manager for the project or responsible for items for which expenditure was being requested; nor did it authorise that expenditure. The person raising the PO did not have to have any association with the subject of the PO and it

was a purely administrative task. He told the Commission that, as a consequence of being the “requester” on POs, related invoices were sent to him but because he had no financial delegation; he always needed to seek a supervisor’s approval to authorise payment on an invoice.

### HVP Unit maintenance and innovation budgets

Mr Hayes gave evidence that a small part of the annual budget of approximately \$40 million allocated to the branch he managed was a maintenance component that was to be shared between the seven units he managed. It was for such things as the repair and maintenance of equipment. He said there was not a lot of money in the budget for discretionary use. He told the Commission that, during the time under investigation, the budget for the HVP Unit was:

*...very modest, somewhere in the region of \$1.2 million, to maintain all of the systems that are out there from a heavy vehicle point of view. That included inspection station facilities, Safe-T-Cam, scales, all of those particular systems that were out there, and it was purely a maintenance budget and a very strained maintenance budget.*

Mr Hayes also told the Commission that, while there was very little budget for innovation or new projects, and no specific funds allocated, he was interested in the area. He told the Commission:

*...the catch here was always the issue of money ... there was no budget given to let’s look into, what do they call it, innovative ideas ... there was no budget for it, therefore you had to go let’s spend a little bit of money here or a little bit of money there to do a small investigation, find, prove concept, and then see whether ... it flies.*

He told the Commission that it would have been a very irregular occurrence for the HVP Unit to engage external consultants and “very rare” for such innovation projects to be initiated and investigated even at a preliminary stage.

### Conflicts of interest

During the public inquiry, Mr Soliman gave evidence that he knew in general what a conflict of interest was in 2015 and 2016, but that it was not at the front of his mind and “obviously I didn’t think about it otherwise I wouldn’t be in this boat I’m in”. Despite the evidence that he had undergone online code of conduct training on 9 February 2015, 9 March 2016 and 14 September 2017, he claimed not to recall that training and only to have familiarised himself with the code of conduct “after all of this happened”.

He gave evidence that until he read the code of conduct relatively recently, he only understood in a general sense what his ethical obligations were and what a conflict of interest was. He claimed not to have understood at the relevant time that a conflict of interest could arise between his duties to the public and his personal friendships, or arise where his personal interests influenced the impartiality of the decisions he made in the course of exercising his official duties.

Mr Soliman said that it was a natural instinct for him if he needed something done to go to his close group of friends and family; just as they would come to him. He claimed not to have thought about the appropriateness or otherwise of giving work to friends in situations where there was work available and his friends were experiencing difficult times. He claimed that it was not until someone else was running a tender process in around 2017 and he read a part of the tender documentation concerning a conflict of interest declaration that “then and there I knew my actions had been wrong, but it had been too late”.

The Commission rejects his evidence that, at the time relevant to this investigation, he did not understand the nature of a conflict of interest. Given Mr Soliman’s exposure to the applicable RMS codes of conduct when first employed and then promoted, and through training, the Commission is satisfied that, at all relevant times, Mr Soliman understood conflicts of interest and that he had a duty to disclose such conflicts.

In his evidence to the Commission, Mr Singh claimed he did have a concern about whether any preferential treatment would be given to Mr Hamidi as Mr Soliman’s friend, but he did not raise it with Mr Soliman at the time. Mr Singh said that he knew what a conflict of interest was at the time and agreed that he had undertaken online code of conduct training every couple of years since joining RMS, but claimed not to have done that training in any meaningful way and not to have absorbed what he read.

He initially gave evidence that it was not until he undertook probity and ethics training in May 2018 that he really learnt that a conflict of interest could be *perceived* as well as actual. Mr Singh ultimately conceded that he understood at the time that there would be an actual conflict of interest when Mr Soliman asked him to register Mr Hamidi’s company as a new vendor on the RMS database.

### Novation becomes an RMS vendor

In August 2015, Mr Thammiyah registered the business name, “Novation Engineering”, as a sole trader with the Australian Securities and Investments Commission (ASIC). He told the Commission that he wanted to start a new venture after receiving a redundancy payout



from Optus in 2014. By this time, he had moved back into the area near where Mr Soliman lived and they had reconnected and their friendship had been rekindled. Mr Soliman offered him what Mr Thammiah described as a “real opportunity”; namely, undertaking technology trials for RMS to test technology such as number plate readers and thermal cameras for law enforcement purposes. Mr Thammiah said that Mr Soliman told him he would be “perfect” for it because he had the experience and knowledge.

In his evidence to the Commission, Mr Thammiah expressed confidence that he had the skills to undertake the work for RMS that Mr Soliman said he could offer him. He claimed that, when he started working for RMS in 2015:

*I was coming off actually a peak kind of point in my career, so I was, I thought I was well versed to actually take on a technology role since I have been involved with technology for most of my academic career and pursued it, I guess, as a passion, obviously. But more to do with the project management side of things in terms of managing a trial in general. It was, I guess, no more complicated or different to what I was accomplishing.*

Contrary to Mr Thammiah's assertions about his skills and qualifications, the Commission is satisfied that, at the relevant time, Mr Thammiah had no relevant academic qualifications in telecommunications, technology or engineering generally. His project management qualifications consisted of a diploma he claimed to have obtained in 2009 or 2010 from the University of New England, following attendance at a week-long course and completion of a month-long project, and a certification from the Australian Institute of Project Management, which was apparently conferred without the need to undertake any additional training or education. The Commission is satisfied that Mr Thammiah had no relevant experience or qualifications in relation to road safety, transport or heavy vehicle enforcement technology.

On 22 September 2015, Mr Thammiah opened a bank account in his name for the business. The following day, Mr Soliman sent an email to the RMS Service Desk requesting that Mr Thammiah's business, trading as “Novation Engineering”, be added as a new contractor to the RMS contract management system, CM21. He forwarded to Mr Thammiah confirmation from the RMS Service Desk that this had occurred the same day.

On 29 September 2015, Mr Thammiah registered Novation as a company. He gave evidence that Mr Soliman told him he could only work for RMS through a company with an Australian Company Number (ACN), as RMS did not work with sole traders. He agreed that, at that time, he

did not have any expectation that Novation would obtain work from any source other than RMS. He agreed that he registered the company on the basis of an expectation that Mr Soliman would award him RMS work.

Mr Singh gave evidence that Mr Soliman told him that his friend, Stephen, had started up a consultancy company and he was going to engage him to do some work. Mr Soliman told Mr Singh this work would initially be to report on a few technology trials. Mr Soliman said the purpose of this work was to answer a direction given from senior management to the effect that, if the HVP Unit wanted to make submissions for funding for any new technologies or equipment, it would need an independent report to attest to the performance and accuracy of the equipment or technology in order to lend that submission more weight.

## Setting up Novation together

On 22 July 2015, before Mr Thammiah had registered Novation as a business name or company, Mr Soliman sent him a 2012 confidential RMS business case for the “Ruggedised Mobile Device Standardisation Project”. This concerned a proposal to purchase 800 ruggedised mobile devices for use across RMS at an estimated cost of more than \$7 million over two financial years.

Mr Thammiah gave evidence that he wanted a template to use to develop a business case for acquiring a growing licence for medical cannabis and he had asked Mr Soliman for one he could use. Despite its caveats on unauthorised disclosure outside RMS, this was the “template” Mr Soliman provided. Mr Thammiah agreed it was “quite useless” for his purposes but denied that it had anything to do with the RMS technology trial work that Mr Soliman had proposed he could offer him.

In June 2016, Novation provided a quote addressed to Mr Soliman for the conduct of a field trial of ruggedised in-vehicle mounted tablets and an accompanying scoping study report for just under \$84,000 (see chapter 3). This was just under a year after he had been provided with the “template” business case.

Mr Soliman agreed in evidence that, by the time he sent Mr Thammiah the business case document on 22 July 2015, he had intended to introduce Novation to the HVP Unit. He said he “maybe” sent it to him as a general document template.

During its investigation, the Commission located the ASIC invoice for the registration of Novation as a business name, an ASIC extract of Novation's registration as a company, and the Novation company logo on Mr Soliman's personal computer. Mr Thammiah's explanation for this is difficult to accept.

He gave evidence that, when he started his first project for RMS, he did not have Microsoft Word installed on his computer and ended up going to Mr Soliman's house "and sort of cutting and pasting and doing a lot of my work there". Following his separation from his wife in 2016, Mr Thammiah became even closer to Mr Soliman and:

*...was at his house quite frequently doing a lot of these studies and it also meant that I just copied the folders that I was working on onto his desktop and, yeah, that's, that's why you have a logo and an invoice.*

Initially Mr Thammiah claimed that he used Mr Soliman's computer because he had "compatibility issues" on his own and then that he worked on Mr Soliman's computer "because he had like, a really nice set-up in his room actually". He claimed to have transferred the file or folder containing the company logo to Mr Soliman's computer and that the ASIC receipt "just happened to be part of the substructure in that file".

Mr Soliman gave evidence that he was unaware that the ASIC receipt for the registration of Novation as a business name, the ASIC extract of Novation's registration as a company and the company logo were located on his home computer. He claimed that he had "just built that PC (personal computer)" at the beginning of 2018 and did not know there was any other data on it. He gave evidence that he used an old USB hard drive that Mr Thammiah had given him "years ago", but shortly after giving that evidence, asserted that Mr Thammiah had given him the USB when he was building the PC in early 2018. He then appeared to accept that, because the receipt and logo were found on his PC rather than a hard drive, the hard drive given to him by Mr Thammiah could not have been the way he acquired these files.

Mr Soliman gave evidence throughout the public inquiry to the effect that, because they were best friends, from the time he started doing work for RMS, Mr Thammiah

was frequently at his house and, when there, regularly used Mr Soliman's PC to do the RMS work. Mr Soliman asserted that, although Mr Thammiah had a PC at his own house, he did not have his own laptop for quite some time.

This was the way in which Mr Soliman repeatedly sought to explain why a large number of documents, purporting to be Novation documents, including quotes, invoices and reports in draft and final versions, were found by the Commission on his PC.

The Commission does not accept Mr Soliman's evidence on this matter, for reasons that will be discussed further in the chapters that follow. In summary, the Commission is satisfied that, documents purporting to be documents created by Mr Thammiah for his company, Novation, were found on Mr Soliman's PC because Mr Soliman was either the author of these documents, contributed in large part to their creation and completion, or used them to create further "Novation" documents such as quotes, invoices and reports. Evidence obtained by the Commission indicates a number of instances in which Mr Soliman used his private email address to send Word versions of Novation documents to Mr Thammiah, who sent them back some time later as PDF documents to Mr Soliman's RMS email address. The Commission is satisfied that this was done to disguise the true author of these documents.

The Commission is satisfied that Novation was a company effectively created by both Mr Soliman and Mr Thammiah in around August 2015. It was created for the purpose of obtaining lucrative contracts from RMS, which would be awarded to it by Mr Soliman or engineered by Mr Soliman to be awarded to it and from which both Mr Soliman and Mr Thammiah could derive profit.

## Chapter 3: Novation – the first six contracts

Between November 2015 and June 2016, the following six RMS contracts were awarded to Novation, which, when combined, earned Novation over \$340,000:

- November 2015 – under-vehicle cameras
- December 2015 – mobile automatic number plate recognition (ANPR) camera scoping study
- February 2016 – thermal scanner technology trial
- March 2016 – portable weigh scales field trial and scoping study
- May 2016 – vehicle dimension scanner field trial and scoping study
- June 2016 – in-vehicle mounted tablet scoping study.

### The first contract – under-vehicle cameras

On 28 October 2015, Mr Soliman sent an email to the four sector managers of the state's heavy vehicle inspectors, in which he wrote:

*We have been trialling a simple and inexpensive under vehicle camera at Mt White HVSS which has shown this simple tool has great benefits (reduced WHS risks and reduced inspection times for under vehicle inspections)*

*The major benefits of this tool would be for on-road inspections so would like to extend the trial to several vehicles in every sector*

*Im thinking ~5 vehicles in every sector should get this unit to extend the trial*

*Could you each pls respond with how many you would like for your respective sectors?*

*Note: we will be modifying the camera extension*

*arm shown above so the camera can slide far enough under the truck.*

On 29 October 2015, Mr Soliman sent a further email thanking the managers for responding with numbers and advising that “the units are coming from overseas, so it will take some time to procure and modify the extension arm for under heavy vehicle needs”.

Later that day, Mr Soliman emailed Mr Thammyiah providing instructions on the camera that he wanted him to order and asked him, “Could you pls source a quote from the vendor for your reference”. Mr Soliman forwarded Mr Thammyiah the email trail of Mr Singh's contact with a Canadian company, which the Commission will refer to as “Company A”, earlier that year, from which Mr Singh had procured two under-vehicle inspection cameras for RMS.

Mr Thammyiah did as he was told, and that day contacted Company A asking for a quote for 21 under-vehicle inspection cameras. On 3 November 2015, Mr Thammyiah received a quote for the 21 units, including shipping and bank charges, totalling US\$10,089. The unit price per camera was US\$389.

The first Novation quote issued to RMS was dated 12 November 2015 and numbered “090”; although the evidence is that, as at that date, the company had issued no previous quotes. It was addressed to Mr Soliman and quoted a fixed price for the supply of 21 under-vehicle inspection cameras. Each unit was priced at \$2,180, and the total quote was for \$50,358. The quote required full payment “upon purchase order creation”. On 19 November 2015, Mr Soliman asked Mr Singh to raise a PO accepting the quote.

During the public inquiry, Mr Soliman claimed not to recall whether it was himself or Mr Singh who asked Novation for the quote or who told Mr Thammyiah from where to source the cameras. He claimed that Mr Singh had had a role in the management of the procurement; although he was vague about whether this extended to anything more

than raising a PO at Mr Soliman's direction and putting Mr Thammiah's invoices into payment. The evidence set out above demonstrates that it was Mr Soliman who told Mr Thammiah where to source the cameras.

That evidence is consistent with Mr Singh's evidence. He told the Commission that, in early 2015, one of the inspectors had emailed Mr Soliman recommending the use of a camera to inspect the underside of heavy vehicles in order to minimise work health and safety risks for the inspectors. Mr Soliman asked Mr Singh to procure two cameras from Company A. These were sent directly to the RMS offices in Parramatta and, from there, to the Mount White Heavy Vehicle Safety Station (HVSS) for a trial.

Mr Singh said that it was Mr Soliman's decision to extend the trial to all sectors and, on 9 November 2015, Mr Singh drafted a memo at his request to the general manager of the Compliance Operations Branch recommending an extension of the trial to a couple of vehicles in every sector as part of the HVP Unit's "continuous improvement initiative".

Mr Singh gave evidence that Mr Soliman told him that, because of some paperwork difficulties previously encountered when raising a PO to pay an overseas company, he was going to get someone external to RMS to procure the cameras for the extended trial.

According to Mr Singh, on 19 November 2015, Mr Soliman asked him to sign a PO as the "requester" and Mr Soliman signed as the person with delegation to accept Novation's quote. Mr Singh told the Commission that, if he even saw Novation's quote before signing the PO, he paid no attention to it, nor to the significant mark-up in Novation's unit price of \$2,180. He gave evidence that, although he knew that Novation was offering no service additional to purchasing the cameras – which Mr Singh himself could have done – it did not cross his mind at the time to question why Novation was being engaged for this task nor what value they were adding.

Mr Hayes gave evidence that the under-vehicle camera was an example of the sort of innovation that he had seen overseas and recognised might have potential for the improved safety and efficiency of inspections. He remembered that he discussed with Mr Soliman the idea of buying a few and seeing whether the operators could use them and whether they were of value. He expected that an informal and cheap initial trial would take place to see whether the inspectors thought it had any promise and, if it did, there would be a request for funding to take the project further. While Mr Hayes did not recall getting any sort of report, he remembered that there was some sort of general feedback that the inspectors were not happy with how the cameras operated or how they were designed.

David Jones, then operations manager for the RMS Sydney West sector, gave evidence that there was no need for under-vehicle cameras to assist the inspectors to do their job and asserted that the ones that turned up one day for the sector to use were "absolutely useless". It was his understanding was that the cameras ended up "in the corner of everyone's offices".

Mr Soliman agreed that ultimately the under-vehicle cameras were not a success and he did not consider them an effective tool for inspectors.

Both the quote from Company A requested by Mr Thammiah and Novation's RMS quote were located on Mr Soliman's home computer.

Mr Soliman gave evidence that he did not recall talking to Mr Thammiah about the price to quote, that he did not recall drafting Novation's quote, that he did not recall the price the supplier had quoted Mr Thammiah, and that he did not recall Novation's mark-up. Later in his evidence, Mr Soliman said that Mr Thammiah came up with the price quoted by Novation.

While both the quote from the overseas supplier and Novation's quote were found on Mr Soliman's home computer, there is insufficient evidence to conclude that it was Mr Soliman who drafted Novation's quote or that he determined the amount of the mark-up that was applied.

Novation was paid \$45,780 (excluding GST) on 21 December 2015 for the 21 under-vehicle cameras. Company A had charged Novation US\$9,588 for those cameras. During the public inquiry, Mr Thammiah agreed that he applied a mark-up of approximately \$1,680 per unit. This amounts to a margin for Novation of approximately \$35,000 for what was little more than an online order.

When asked how he determined Novation's quoted price, Mr Thammiah gave evidence that part of the \$2,180 per unit contemplated the "unusual" possibility that RMS might choose to return the cameras to him and, if they did so after they were modified, he in turn would not be able to return them to the supplier and would therefore lose money. He claimed it was "my own warranty claim for RMS". The Commission rejects this explanation. It is inconsistent with the terms of the Novation return policy, as set out in the quote to RMS, which required any returns for refund to occur with 14 days of receipt, to be in the original packing material, in "like new" condition and to incur a 20% "restocking fee".

On or about 13 January 2016, a little over three weeks after Novation was paid \$45,780 by RMS, Mr Thammiah withdrew \$10,000 from the Novation account. The only funds deposited into the account before the withdrawal were the RMS funds received on 21 December 2015.



for the under-vehicle cameras. On about 13 January 2016, Mr Thammiah paid \$10,000 in cash to Mr Soliman. He denied the payment was a reward to Mr Soliman for awarding the RMS contract to Novation.

This payment will be examined in more detail in chapter 10; however, it is sufficient to refer to Mr Thammiah's inconsistent evidence on this payment. He claimed in a compulsory examination held on December 2018 that he lent Mr Soliman \$7,000 of the \$10,000 he withdrew in cash to assist him, as he was in financial stress and was building a house. In comparison, at the public inquiry, he claimed Mr Soliman had asked for \$10,000 to help out a friend, "Tim the islander with the square jaw", who was experiencing financial distress. Mr Thammiah said that Mr Soliman took him to this friend's house and:

*...kind of made it out that I was helping him kind of I guess from an altruistic perspective and, yeah, he said that this friend of his helped him out during his divorce, much like I guess he was providing some support to me at the time.*

Mr Thammiah claimed that his expectation was that he would have the money returned to him by Mr Soliman, but that Mr Soliman "pursued a larger loan instead". He gave evidence that that larger loan was pursued from approximately June 2016, after Mr Thammiah had separated from his wife and Mr Thammiah was "quite vulnerable", which presented an opportunity of which Mr Soliman took advantage.

Mr Soliman denied that he had a vested interest in Novation getting the RMS contract, saying "I don't think I even started getting money from Mr Thammiah at that point, from what I can recall ... From what I can recall it was a bit after that first project".

The financial benefit received by Mr Soliman from Mr Thammiah and Novation is considered in detail in chapter 10. At a minimum, the Commission is satisfied that the \$10,000 was a payment from Mr Thammiah to Mr Soliman as a reward for Mr Soliman arranging for Novation to be given a contract for the supply of under-vehicle cameras. In making this finding, the Commission notes that the payment by RMS and the withdrawal of \$10,000 for Mr Soliman were proximate in time, and that the money came from the Novation account, into which the funds from RMS had been paid, and the inconsistent evidence given about the reason for the payment.

The Commission is satisfied that the \$10,000 payment by Mr Thammiah was the first payment pursuant to the agreement or understanding between them that they would share in the profits earned by Novation from RMS work (see chapter 10).

## The second contract – mobile ANPR camera scoping study

On 10 September 2015, before Novation had been registered as a company, or added to the RMS databases as a vendor, Mr Soliman sent Mr Thammiah an email with a hyperlink to product information for the Tattile mobile ANPR camera.

On 3 December 2015, Mr Thammiah sent Mr Soliman an email attaching Novation's quote numbered "089" for \$39,540, to undertake mobile ANPR technology trials and provide a scoping study. The scope of works covered by quote 089 included the following items:

1. *Research world best practise mobile ANPR systems for agreed key performance indicators ...*
2. *Subsequently choose one or more camera technologies to trial which meets RMS regulatory camera requirements ...*
3. *Mobile ANPR technology trial requirements ...*
4. *Fabrication of a stationary camera mounting for all technologies being trialled.*
5. *Fabrication of an in-car camera mounting for all technologies being trialled.*
6. *Report on results of all mobile ANPR technology trial results in the format prescribed by RMS.*

The same day, Mr Soliman sent Mr Thammiah an email directing him to "use this spreadsheet as a template for your trials of the mobile ANPR camera".

Mr Thammiah gave evidence that he did not believe that the price in this quote was a figure suggested to him by Mr Soliman, but he said that Mr Soliman verbally communicated RMS's requirements set out in the scope of works in the quote and that he based his quoted price on those requirements. Mr Thammiah said he probably typed up the scope of works as they spoke, which "more than likely" occurred at Mr Soliman's house and they "more than likely" discussed the price while he was drafting the quote. Mr Thammiah claimed that he came up with the quoted price himself and that he considered it to be a fair and reasonable price.

On 7 December 2015, Mr Thammiah sent Mr Soliman a further email attaching a new version of quote 089, this time in the amount of \$79,140. The "payment milestones" required 50% on PO creation, and 50% on report acceptance by RMS. This was the quote accepted by Mr Soliman on 7 December 2015, when he signed a PO raised by Mr Singh at his request. Mr Thammiah was duly paid 50% of the quoted amount, being \$39,570, on 21 January 2016.

The later version of quote 089, in addition to almost doubling the cost of the earlier version, contained a number of additions to the scope of works, including that Novation would provide the engineering/design as well as fabrication of any vehicle dash and vehicle roof camera mounting. Mr Soliman was asked during the public inquiry whether he had made the changes to Mr Thammiah's quote. He responded that he did not know. He stated that, if Mr Thammiah asked for guidance, he definitely gave it to him, for this and other projects, and that it was possible that this extended to sometimes amending quotes; although he could not recall amending this particular quote. He denied being responsible for the decision to almost double the price of the quote, but agreed that he had "probably" come up with the scope of works. He claimed that Mr Singh was responsible for managing the project.

Mr Singh denied that he was the project manager for this trial. He said that Mr Soliman told him he was going to trial a mobile ANPR camera and then told him it did not perform well after the trial took place. Mr Singh said he did not attend the field trial and never saw a scoping study report in relation to it.

The Commission is satisfied that it was Mr Soliman and not Mr Singh who initiated and managed this project. He engaged Novation, set the scope of works, accepted the quote, chose the technology to trial, and directed the way in which the trial was to be conducted by providing Mr Thammiah with a template for the data he was to collect.

Mr Soliman gave evidence that he was involved in selecting the camera that would be trialled. He said that while Mr Thammiah "did some research" and came up with a couple of other options, in the end, because Mr Soliman preferred the Tattile camera, that was the one they both decided to trial. He said that, as he did not attend the trials conducted by Mr Thammiah, he was unaware whether Mr Thammiah in fact undertook the design, engineering or fabrication of the vehicle dash and roof camera mounting, as quoted. Mr Soliman disagreed that Mr Thammiah would need to have expertise or experience to undertake the quoted engineering or fabrication of in-vehicle camera mounting, saying "just choose a camera, figure out the mounting you need and see if it needs to be fabricated or you can purchase it". He gave evidence that, if Mr Thammiah had the camera, "it's not very hard to go to a fabricator to fabricate the actual hardware" to mount it, but he never asked Mr Thammiah about it.

Mr Thammiah gave evidence that he had in fact "fabricated" the dash-mounting for the ANPR camera himself:

*...it required a stable platform that was level, so my simple solution was using something I picked up previously from Optus, but it was just using a polystyrene block to cut out the exact shape of the base of the camera itself and making sure that it was actually level and, yeah, positioned correctly ... it's basic. It's quite easy.*

Mr Thammiah agreed that he did not do any design or engineering in this trial, but "just that basic sort of styrofoam fabrication".

The Commission is satisfied that Mr Thammiah's use of a styrofoam block to position and keep the camera level did not constitute the engineering/design and fabrication of dash or roof in-vehicle camera mounting as described in Novation's quote and could in no way have justified the price quoted by Novation.

Mr Thammiah told the Commission that he was asked to conduct the trial "autonomously". The manufacturer provided him with one camera and a manual and the person delivering it provided him with a 10-minute "walk through" on how to use the technology. He claimed that he trialled it according to the RMS specifications and used it to monitor traffic on the side of highways and public roads during a trial that lasted multiple days over a three-month period and involved him spending at least 150 hours on the side of the road; although he kept no time sheet or diary. The trial consisted of him taking photographs of number plates and analysing the accuracy of the camera's software in recognising and transcribing the numbers and letters on the photographed number plates. He claimed that he presented the data he obtained in a scoping study report that he emailed to Mr Soliman.

## The report

On 21 January 2016, the day that Mr Thammiah received payment from RMS of \$39,570, in accordance with his quote's first payment milestone, Mr Soliman sent himself a placeholder email with the subject line "Work on M.APNR report". Seven days later, he sent Mr Thammiah an email from his personal email address with the subject line "mobile ANPR camera scoping study as at 28/01/16". The email attached a Word version of a draft report on Novation letterhead, dated 10 February 2016. The draft report contained a number of blank sections with notations, including "???" and "xxxxxx", indicating that information was expected to be inserted prior to completion. The body of the covering email contained only the word "update".

On 2 February 2016, Mr Thammiah sent a completed report to Mr Soliman's RMS email address in PDF version. The email advised "PDF version – minor formatting adjustment". The sections of the draft report

that had required the insertion of information had either been completed with figures or deleted from the PDF version altogether.

One of the sections in the draft report that had required the insertion of information, but that had been deleted in the finalised version, was a section titled “Mobile ANPR World Best Practice Report”. The final report therefore did not include an item listed in the scope of works in the quote accepted by Mr Soliman, to “provide recommendations on potential enforcement applications based on world best practice research performed”.

During the public inquiry, it was put to Mr Soliman on a number of occasions that he had prepared the draft report and sent it to Mr Thammiah with an instruction for him to “update” it by supplying the indicated required information. It was also put to him that he had sent the draft to Mr Thammiah from his personal email address to hide the fact that he was the report’s author, rather than Mr Thammiah, who was receiving payment from RMS for this work. Mr Soliman conceded having had some input, stating:

*I recall that I put in some words about the camera, I think, or something like that. I knew a bit about the camera ... I’m pretty sure it was a blurb about the camera itself. It was a Tattile camera, which I knew a bit about.*

However, he stated “I definitely didn’t do the whole thing”. He claimed that he used the word “update” in his covering email to indicate that he had updated the report by adding some words about the Tattile camera with which he was familiar.

In his evidence to the Commission, Mr Thammiah initially denied that Mr Soliman had emailed the report to him from his personal email address and directed him to complete it. Mr Thammiah claimed that he sent it to his own email address from Mr Soliman’s personal email address because he was working on the document at Mr Soliman’s house, on Mr Soliman’s computer at the time, and it was Mr Soliman’s email account that was always logged in. He denied that the word “update” was a direction to complete the draft and said the word in his cover email to himself should have been “updated”. He said he was at Mr Soliman’s house, not because he needed help to do the work, but because he was “leaning on a friend during a hard time”.

In his subsequent evidence, Mr Thammiah agreed that it was “possible” that Mr Soliman had prepared the draft of this report. When asked whether Mr Soliman had prepared at least some of Novation’s scoping study report drafts, Mr Thammiah responded:

*...from my recollection, he always made me feel like I was the main contributor to these reports. Like, his help was always justified from the perspective of what I was going through. He never made me feel like he was doing the work.*

Mr Thammiah explained that, in the preparation of scoping study reports, both he and Mr Soliman were involved in typing up the documents. He gave evidence that, at times, he sat at the computer typing as Mr Soliman dictated and, at other times, he dictated while Mr Soliman typed. Mr Thammiah denied that there were occasions when Mr Soliman was typing without him dictating.

Mr Soliman asserted in his evidence that Mr Thammiah was able to provide the opinions expressed in the report about the performance of the Tattile camera because he was present at the trials and had conducted research using the internet. The following exchange illustrates the general position Mr Soliman adopted in relation to Mr Thammiah’s credentials to undertake this and similar field trial and scoping study projects for RMS:

[Counsel Assisting]: *So anyone could come along and attend a trial, with no preceding knowledge about the technology, see it in action, do some Googling, and then include in a report to RMS an opinion such as that in the first sentence of page 8, page 9 of this report?*

[Mr Soliman]: *It’s a report on the performance of the camera, yeah. That’s exactly what it is.*

[Q]: *And you would consider that to be a valid opinion to inform heavy vehicle enforcement operations?*

[A]: *Mmm, very much so.*

The Commission is satisfied that it was Mr Soliman rather than Mr Thammiah who substantially drafted the report submitted by Novation following the trial of the Tattile camera. Mr Thammiah’s role was limited to providing some information missing from the draft report provided by Mr Soliman and some minor formatting changes.

The executive summary of the report asserted that “the research undertaken draws attention to the fact that the mobile ANPR market is currently in its infancy compared to fixed ANPR technology”. In answer to the question of what research he had undertaken, Mr Thammiah initially gave evidence that he had done none in relation to choosing the ANPR technology to trial. On reading his own report’s executive summary during his evidence,

however, he then asserted that he *had* done “general research” about ANPR after all, using the internet to ascertain roughly such things as when it was developed, the leading provider of the technology, how it was applied and its useful applications.

The Novation report claimed that an extensive in-field study of the ANPR camera had been performed over a two-month period in many different weather conditions, including severe, prolonged heat. The period between Mr Soliman’s acceptance of the quote and the draft report sent by him to Mr Thammiah, which also contained this assertion, was less than two months. Mr Thammiah gave evidence that the trial was undertaken over multiple days across three months.

The Commission is satisfied that, while Mr Thammiah may have collected and analysed some data in relation to the performance of the Tattile camera, this could not be said to have constituted an “extensive in-field trial” over three months, given that the quote was accepted on 7 December 2015 and the bulk of the report was drafted by 28 January 2016.

Significantly, the Novation report recommended that RMS should not proceed with the model of Tattile camera that was tested during the trial, claiming that, while it proved to be a very reliable device in some respects, it failed to meet two of the three RMS-required key performance indicators; namely, vehicle detection and ANPR accuracy. This conclusion ensured, effectively, that Novation’s report would not be seen or read by anyone other than Mr Soliman, would not be used to support any funding submission for procurement of the technology, and would have no wider benefit to the organisation. Mr Soliman agreed in evidence that he would have read the report but that he did not think he would have saved it anywhere on RMS’s system other than in his own email account. He agreed “in hindsight” that, having used public funds to procure the report, it should have been available at a minimum to the rest of RMS personnel.

On 17 February 2016, Mr Thammiah sent an invoice to RMS for the second payment milestone of \$39,570. Mr Soliman gave evidence that he did not think he would have seen the invoice and that, as a matter of course, Mr Singh would only have checked with him whether an invoice was approved for payment if there had been a problem. On 8 March 2016, Mr Thammiah was paid \$43,527.

Mr Thammiah could not explain why, given his initial quote was for \$39,540 for the total scope of works, he ultimately submitted two invoices, each for approximately this amount, on 15 December 2015 and 17 February 2016. He gave evidence that “there’s obviously either a mistake with the quote or a mistake with the invoices” but insisted

that he had prepared the invoices and Mr Soliman had never discussed with him doubling the price he had initially quoted. He gave evidence that, looking at it in retrospect, the invoices should have been for approximately \$20,000 each, given that he had initially quoted \$39,540.

On the final day of the public inquiry, Mr Thammiah was asked whether he had amended the quote to include extra items in the scope of works, including the engineering and design of the camera mounting, and had also nearly doubled the quoted price during this process. Mr Thammiah said that he could not recall, although he had a “theory” to explain both the wider scope of works and the increased price, which involved Mr Soliman making those amendments.

The Commission is satisfied that there was no value to RMS from either the trial or the resulting report, but that a significant amount of money was paid to Novation for what was no more than a fairly rudimentary data collection and analysis that required no particular expertise and could have been done by any RMS employee. The Commission finds that the scope of works for which Novation quoted was not undertaken or completed in full by Mr Thammiah; although Novation was paid in full for this work.

The Commission is satisfied that Mr Soliman used his position at RMS to favour Mr Thammiah by arranging for this work to be awarded to Novation.

### The third contract – thermal scanner technology trial

On 11 January 2016, Mr Singh sent an email to Mr Soliman’s private email address attaching a report produced by a company, which the Commission shall refer to as “Company B”, for RMS following its trial of a portable thermal camera system it had developed for use in heavy vehicle inspection. There was no explanatory text in the email.

Mr Singh gave evidence that he was not sure why he sent the report to Mr Soliman, other than that he did as he was asked.

On 22 February 2016, Mr Thammiah sent Mr Soliman Novation’s quote numbered “091”, in the amount of \$76,274, to undertake a field trial and scoping study of thermal vehicle scanner technologies, the engineering/design and fabrication of pavement mounting for the scanner, and a report on the trial with recommendations. The “payment milestones”, as for the previous ANPR project, required 50% payment on PO creation and 50% on report acceptance. The only field trial requirements set out in the scope of works in the quote were that the scanner be pavement-mounted and trialled in adverse



weather conditions, including rain, fog, very high ambient temperatures and in low-lighting conditions, such as at night.

Mr Thammiah gave evidence that Mr Soliman provided him with the scope of works and that they sat in a room at Mr Soliman's house and prepared the quote together. He said that Mr Soliman did not exactly give him the price to quote, "but he definitely said the right things to make me come up with the right price".

Mr Soliman signed a PO request raised by Mr Singh and accepted Novation's quote on 24 February 2016. A Novation invoice dated 8 March 2016 was issued for \$38,137 for the first payment milestone and RMS paid this amount into Novation's account on 4 April 2016. A copy of this invoice was located by the Commission on Mr Soliman's home desktop computer following the execution of a search warrant at his home address on 18 October 2018.

During the public inquiry, Mr Soliman was asked whether he had drafted this invoice. He responded that he did not know, that he did not recall doing so, but also that he "highly doubted" that he had. He conceded that he may have previously sent Mr Thammiah a template for an invoice and noted that Mr Thammiah was regularly at his house and that, if he needed to use the computer there, he could. Mr Soliman also conceded that there was an agreement between himself and Mr Thammiah that invoices on Novation letterhead would be submitted to RMS and approved by him, saying "Well yes, I favoured him, yes".

On 14 March 2016, Mr Soliman emailed Mr Thammiah a copy of the report from Company B, saying, "here is the other thermal trial I did. Have a look at what they reported on and include these stats in your scoping study".

During the public inquiry, Mr Soliman was asked whether he thought there was anything wrong with asking Mr Thammiah to take information from a report by a third party from a previous trial and include it in a report, which he had engaged Novation to prepare. He responded:

*...at the time I thought it was just random data that could aid the follow up trials ... that's what I thought at the time. There wasn't anything particularly special ... I thought it was just the temperature data.*

Despite the clear wording of Mr Soliman's email of 14 March 2016, Mr Thammiah did not agree, in his evidence to the Commission, that Mr Soliman was asking him to include the statistics from the attached report in his own report. He claimed that he understood he was being provided a template to use, although he could not recall what he did when he received the email.

The Commission notes that the ultimate Novation report provided to Mr Soliman did not contain any material from the report prepared by Company B.

Mr Thammiah said that the trial was initially set up at Marulan (a town in the Southern Tablelands of NSW, near Guburn) and then moved to Picton Road and was then conducted over approximately four days. He said that the trial involved testing a particular thermal scanner used to detect brake faults. At certain temperatures captured by the thermal scanner, an alarm would trigger indicating the need for a visual inspection of possible faults. Mr Thammiah said that he knew how to carry out the trial because he was there with the thermal technology vendor and had been given the trial requirements and instructions by Mr Soliman.

On 13 June 2016, Mr Thammiah submitted a second Novation invoice to RMS in the amount of \$38,137, said to be for the second payment milestone. The invoice stated that the second milestone was "RMS project finalisation", whereas the quote had identified the second payment milestone as report acceptance by RMS. Even though no report had been submitted to RMS by this point, RMS paid the invoiced amount into Novation's account on 22 June 2016.

Mr Singh gave evidence that he did not recall ever receiving a scoping study report for this thermal scanner project and he did not ever question whether there was one. He said he saw Novation reports on Mr Soliman's desk and made the assumption that reports were being created or sent to him.

Mr Thammiah gave evidence that he did not believe that he prepared the two invoices for this contract at Mr Soliman's house or that Mr Soliman drafted them. He said that it was likely that he had prepared them at his own house, where he had a computer. Mr Thammiah said he had no recollection of preparing any Novation invoices at Mr Soliman's house.

Mr Thammiah was asked why, if he had prepared the invoices for this contract at his house, rather than at Mr Soliman's, one of the invoices was located by the Commission on Mr Soliman's home computer. Mr Thammiah responded:

*...probably because I did transfer files across to his computer ... I did transfer a folder across from my laptop or USB onto his computer to access files. It could have been in amongst that".*

On 12 July 2016, Mr Soliman used his personal email account to send Mr Thammiah the PDF version of a Novation report titled "Thermal Vehicle Scanner scoping study", dated 8 July 2016. Mr Soliman's cover email was blank. On 28 July 2016, Mr Thammiah sent an identical

report back to Mr Soliman's RMS email address, stating in his cover email:

*Hi Samer, I am pleased to submit the final version of the thermal vehicle scanner scoping study. Please do not hesitate to contact me for any further information. Regards, Stephen Thammiah.*

A version of this report was also located by the Commission on Mr Soliman's home computer, essentially identical in its contents to the report sent by Mr Soliman to Mr Thammiah on 12 July 2016 and the report submitted to Mr Soliman by Mr Thammiah on 28 July 2016.

Appendices 1.3 and 1.4 to Novation's report were said to have been submitted to RMS on a USB drive and to consist of videos of all heavy vehicles screened and a spreadsheet of all raw intercept data captured during the trials. The Commission's investigation found no evidence of these appendices to the report.

Mr Thammiah agreed during his evidence that he had sent Mr Soliman exactly the same report as Mr Soliman had sent him two weeks earlier using his private email address. He denied, however, that Mr Soliman had prepared the report. He said that they worked together on the scoping studies at Mr Soliman's house because he could not work on these projects alone and relied on Mr Soliman to "force" him to do the work because he was so "disengaged from parts of [his] life". He claimed that Mr Soliman sent the document to him from his personal email address because "he generally has to send me those documents somehow off his computer". He said he had no idea why he did not submit it to RMS on the same day that Mr Soliman sent it to him.

Mr Thammiah was taken to the content of Novation's report during the public inquiry. He gave evidence that the project background information came from Mr Soliman but said that he had "no idea" who actually typed up the report; although, if Mr Soliman had been dictating, it was maybe he who was typing. Mr Thammiah conceded that Mr Soliman also provided the opinion included in the report that the thermal scanner selected to trial was currently the world leading technology in its ability to precisely measure temperatures on moving vehicles.

Mr Soliman told the Commission he did not recall preparing the scoping study report. He disagreed that he sent the report to Mr Thammiah from his personal email address to avoid detection. He said that as Mr Thammiah was at his house a lot, Mr Thammiah could have been working on the report there and he claimed that it "made sense" that he would have emailed it to himself from Mr Soliman's personal email address because he had access to that email on Mr Soliman's home computer. He stated that he did not think that Mr Thammiah had access to Novation's email from Mr Soliman's house.

The Commission does not accept Mr Soliman's evidence that it "made sense" for Mr Thammiah to email the report to himself from Mr Soliman's personal email account because that was the email account that was always logged on on Mr Soliman's computer and he believed that Mr Thammiah did not have access to Novation's email when he was working at Mr Soliman's house.

As at March 2016, Mr Thammiah had his own laptop, which he brought to Mr Soliman's house. He also had remote access to his Novation email. The Commission finds that it in fact made *no* sense for Mr Thammiah to use Mr Soliman's personal email address to send himself the final PDF version of a report when he had access to Novation's email and he could have submitted the report there and then to Mr Soliman at his RMS email address rather than wait another two weeks to do so.

Mr Thammiah's scant recollection of the specific details of the thermal scanner report, including how he carried out his data analysis and the various parts to the study, and the fact that the report was sent by Mr Soliman to Mr Thammiah, supports the inference, which the Commission draws, that it was Mr Soliman rather than Mr Thammiah who authored the report.

Mr Thammiah could not explain to the Commission how he conducted his analysis of the temperature data collected at the two trial sites as claimed in the report. He also could not recall how each of the three parts to the study was done.

Mr Thammiah gave evidence that it was the technology vendor, rather than himself, that set up and operated the thermal scanner; even though this had been part of the work Novation had quoted to undertake. He also said that he only attended the first trial site at Marulan briefly when the scanner was installed but the set-up failed. Mr Thammiah gave evidence that, during the trial at the second site at Picton Road, he and the vendor each had a laptop on which they could view thermal images as the trucks were scanned. Other than this, he claimed to have no recollection about specific information connected with the data obtained or the trends that were identified because of the number of years since the trial.

The conclusion in Novation's report on this trial asserted that the vehicle scanner had proven to be suitable and met all the key performance indicators required by RMS.

The Commission is satisfied that Mr Thammiah did not set-up or run the trial of the thermal scanner, and did not design, engineer or fabricate the pavement-mounting for the scanner, as his quote indicated he would. The Commission is satisfied that Mr Thammiah merely attended a trial run by the technology vendor and obtained the same data as the vendor. The resulting analysis, identification of trends and formulation of a recommendation that appeared in

Novation's report occurred, by his own admission, "in collaboration" with those attending the trial, including the vendor, and therefore could in no way be considered independent. The recommendation in the report simply endorsed what was already happening; namely, the installation and integration of the relevant technology with the existing RMS interception system. The purported justification for RMS to contract a third party such as Novation to conduct a trial and scoping study of technology – namely independence from the vendor – was manifestly absent from Mr Thammiah's own description of the conduct of the trial and study.

The Commission is satisfied that this is another example of Mr Soliman using his position at RMS to favour Mr Thammiah by giving work to Novation.

## **The fourth contract – portable weigh scales field trial and scoping study**

Following the execution of a search warrant on the home of Mr Soliman in October 2018, the Commission located Novation's quote numbered "092" to RMS on Mr Soliman's home computer. The scope of works set out in this quote, which was dated 18 March 2016, required Novation to select for trial, "in conjunction with RMS", three preferred portable weigh scale models currently certified or certifiable by the National Measurement Institute (NMI) for heavy vehicle mass regulation and enforcement in NSW. Novation was to lease for one month a set of each of the selected scales and conduct a field trial assessing each scale against a number of criteria, including accuracy, work health and safety matters, such as scale weight and dimensions, software connectivity and performance in adverse weather conditions. It was then to report on the trial results and recommend a preferred portable weigh scale model for the RMS, taking into consideration such matters as procurement costs and the lifetime of the scale claimed by the manufacturer. For this work, Novation quoted a fixed price of \$25,129.50, with a requirement of 100% payment on delivery of the report.

Mr Soliman was not able to give any explanation to the Commission for the quote being on his home computer.

Mr Thammiah emailed a copy of this quote to Mr Soliman's RMS email address on 18 March 2016 from Novation's email address.

On 21 March 2016, Mr Soliman signed a PO request he had asked Mr Singh to raise and thereby accepted Mr Thammiah's quote. Mr Thammiah emailed RMS an invoice on 13 June 2016, copying Mr Soliman. RMS paid \$25,129.50 into Novation's bank account on the same day as the invoice was submitted.

## **The work**

A Word version of what appeared to be Novation's finalised portable weigh scale scoping study report, dated 4 May 2016, was also located by the Commission on Mr Soliman's home computer. This version of the report advised that its appendix 1.3 consisted of a complete data subset of the field trial results in "attached USB drive". The Commission's investigation did not locate the USB drive referenced in the report.

On 11 May 2016, Mr Thammiah sent Mr Soliman an email to his RMS email address, in which he provided a "google drive link" to a report (apparently necessary because of the file size limit) and wrote that he was "pleased to submit the final version of the portable weigh scale scoping study". The Commission has been unable to access the content of any report contained at this link, to compare it with the version located on Mr Soliman's home computer.

Novation's report, which was located on Mr Soliman's computer, referred to three types of portable weigh scales: the PAT/static axle weigher (SAW) brand supplied by International Road Dynamics (IRD), which comprised the bulk of the RMS fleet, the Intercomp model supplied by Accuweigh, and the HAENNI model supplied at the time by HAENNI Australia.

The conclusion ultimately reached by Novation's report was that all three portable weigh scale brands that were tested proved to be suitable. However, the HAENNI model outperformed the models supplied by IRD and Accuweigh in terms of overall efficacy, especially ergonomics, and in addition performed better with regards to work health and safety considerations. In particular, the HAENNI scale weight and height were found to be considerably lower than the other models. The report concluded that it was the preferred and recommended portable weigh scale model based on RMS requirements and cost.

Mr Thammiah told the Commission that he recalled the portable weigh scale trial and believed it involved trialling three different scales at the Kogarah depot. He recalled that Mr Soliman attended the trial and he believed he took the lead at it. Mr Thammiah said his own involvement was to conduct the trial, which entailed, according to his generic description, "just taking down notes, watching how everything operates".

Mr Soliman told the Commission he did not think he attended any of the trials.

The Commission is satisfied that Mr Soliman engaged Novation to conduct a trial and provide a scoping study report for which RMS had no business need at the time. According to his own evidence, there was no funding

available for replacement scales and securing funding was not in Mr Soliman's contemplation at that point. The trial involved the pointless testing of scales that were already being used by RMS; namely the IRD-supplied PAT and the HAENNI models. The testing of the third model, the Accuweigh-supplied Intercomp, was apparently to satisfy Mr Soliman's "curiosity" about this new brand but, by his own evidence, the entire report was redundant by the time funding had been secured to replace the portable weigh scale fleet, because new models had become available to test.

## The report

Given that a copy of the Novation report was found on Mr Soliman's home computer, the question arose as to whether he was the author of the report, whether in whole or in part. When asked if he had prepared the report, Mr Soliman stated:

*I don't recall doing this. Maybe I got a copy from Steve, maybe he was working there but I, again, I don't recall even going to whatever this trial was.*

Mr Soliman conceded that he would have provided some help to Mr Thammiah in drafting that part of the report that set out the requirements and considerations for the field trials and how Mr Thammiah should go about this task, and he conceded that Mr Thammiah would not have known about those things to include them in the report.

When Mr Soliman was taken to data contained in the report summarising the specifications for each of the scales that were trialled, he said he did not know whether he had inserted the specification information about each of the scales tested:

*Steve could have just copied and pasted this from the manufacturer's site, I guess ... Oh, anyone could have done it, yeah ... It's very basic stuff. I don't see why I would need to do it for him.*

Mr Soliman claimed not to recall including any of the trial results in the report and only to have seen them "afterwards", either when he was sent the report, or when Mr Thammiah showed the report to him as he was working on it. Mr Soliman claimed that if Mr Thammiah was working on the report at Mr Soliman's house, he would obviously be there too, but he also said "I would be doing my own, own work if I was, if I was working from, from home", and would therefore not necessarily have been sitting with Mr Thammiah to assist him. He said that, if Mr Thammiah had a specific question about what to put in a scoping study report, he was happy to help, but he said he did not recall how many questions Mr Thammiah had in relation to this particular report.

Mr Thammiah said he did not know where he prepared

the resulting report, nor whether Mr Soliman was present when he prepared it. When he was asked shortly after this evidence why the Novation report came to be found on Mr Soliman's home computer, Mr Thammiah stated that, to his knowledge, it was because he was working on it from Mr Soliman's computer because he would go to Mr Soliman's house to finish his reports. He also said that Mr Soliman worked on it with him "from the perspective of the stakeholder kind of thing". He explained that this meant that Mr Soliman "would always have a veto over the scoping study if submitted and he didn't like something", because he was the "responsible person" or "project sponsor". When it was pointed out to Mr Thammiah that this intervention was problematic given that he was supposed to be independent, he claimed that Mr Soliman's veto was less about the contents of the report and more about formatting and grammar and how the information was graphically represented.

The Commission is satisfied that Mr Soliman was substantially involved in drafting the report. If Mr Thammiah had drafted the report at Mr Soliman's house, there is no reason he could not have sent it immediately to Mr Soliman's RMS address without having to first send it to himself at Novation's email address. His own evidence is that he had remote access to Novation's email at Mr Soliman's house. The more likely explanation is that Mr Soliman drafted or at least directed the drafting of the contents of the report and sent it to Mr Thammiah from his personal email address, with the implied instruction that Mr Thammiah resubmit it to Mr Soliman's RMS address representing it as the work of Novation.

## What happened to the report?

Mr Soliman claimed not to recall what he did with the report once he received it, including whether he gave it to his supervisor, Mr Hayes. In any event, he did not know whether there was anything he *could* do with Novation's report because there was no funding available at that time to replace the RMS fleet with whatever the recommended scale was. It was Mr Soliman's evidence that, by the time he had succeeded in obtaining such funding, the report was no longer valid because the vendors had new models of scale to test; although he could not recall what these were.

The Commission is satisfied that, on 13 June 2016, when Mr Thammiah submitted an invoice and was paid over \$25,000, he knew that he had not fully, properly and independently completed the work for which he quoted, invoiced and was paid. The Commission is satisfied that, when Mr Soliman accepted Novation's quote for this project, he was authorising payment to Mr Thammiah for work he knew Mr Thammiah would not undertake, or which Mr Thammiah could not undertake independently



and which Mr Soliman himself would be substantially involved in performing. In addition, the Commission is satisfied that Mr Soliman knew he was not obtaining value for money for RMS, as he was obliged to do.

The Commission finds that the need to trial the IRD-supplied and HAENNI models when these were already being used by RMS, and when the PAT scales, which comprised the majority of the existing fleet, had come to the end of their life, remains inexplicable on the evidence available to the Commission.

The Commission notes, however, that other evidence indicates that, by the time the report was drafted, significant complaints were being made about the maintenance services provided for the IRD-supplied scales by Electronic Load Weighing Company of Australia Pty Ltd (ELWC), the third-party contractor then maintaining the IRD equipment. The report itself noted that IRD, unlike HAENNI and Accuweigh, did not have local manufacturer maintenance support for its assets. This fact becomes highly relevant to the matters discussed in chapter 4, which examines how Novation came to replace ELWC as IRD's sole NSW distributor of scales and spare parts.

## The fifth contract – vehicle dimension scanner field trial and scoping study

On 9 May 2016, Mr Thammiah emailed Mr Soliman Novation's quote numbered "093" of \$23,089, to undertake a field trial and scoping study of a vehicle dimension scanner. The quote included an item for the engineering/design and fabrication of a mounting bracket for the scanner and an item for the preparation of a report to provide the trial results and recommendations "on potential enforcement applications based on world best practice research performed". The payment milestones required by the quote were 50% on PO creation and 50% on report acceptance by RMS. Mr Soliman accepted this quote by signing the PO request raised by Mr Singh the same day. A copy of Novation's quote was also located by the Commission on Mr Soliman's home computer.

Mr Thammiah gave evidence that Mr Soliman definitely helped draft the quote by providing him with the scope of works for the project. The Commission accepts this evidence.

During the public inquiry, Mr Singh was shown Novation's quote for this project and the field trial requirement of roof or gantry mounting for the scanner. Mr Singh noted that this made no sense as the scanner was not installed on a roof or a gantry, but in the checking station shed at Marulan. As well as the quote, Novation's report

for this project also indicated that one of the field trial requirements was that the vehicle dimension scanner trialled be roof-mounted at Marulan Southbound Heavy Vehicle Safety Station (HVSS). The field trial results summary in Novation's report, however, contained the following obvious inconsistency:

*...three individual scanners were installed on the roof of the HVSS, which were connected to one central controller. Heavy vehicles were intercepted and were automatically measured using this technology as they drove over the weigh bridge, which is where the scanners were installed.*

In relation to the engineering, design and fabrication of the mounting bracket itemised in Novation's quote, Mr Singh gave evidence that the mounting of the scanner was undertaken by the vendor (SICK).

On 20 June 2016, Mr Thammiah submitted Novation's invoice, which Mr Soliman forwarded to the finance section for payment. This was the same day Mr Thammiah was supposed to attend the trial, but apparently could not. On 22 June 2016, RMS paid Novation just over \$23,000.

## What was done by Novation?

Mr Singh gave evidence that Mr Thammiah attended the Marulan HVSS site for the installation of the software for the SICK dimension scanning system on 12 May 2016. Mr Singh said that Mr Thammiah brought his laptop to the site solely in order to have the software installed so that it would be available to him for the trial proper. He explained that Mr Thammiah's role in conducting the trial, which was scheduled for 20 and 21 June 2016, would be to run the software and capture the scanner's measurements of the vehicle, as well as the manual measurements taken by the RMS inspectors.

Mr Singh told the Commission that, on the days that Mr Thammiah was supposed to attend the trial, Mr Soliman told him that Mr Thammiah had an injury of some sort and was not able to attend. Mr Soliman asked Mr Singh to go to the site instead and liaise with the vendor who was running the system to capture the data. Mr Singh said that he attended both days of the trial.

It was put to Mr Singh in cross-examination by Mr Thammiah's counsel that there had in fact been another trial, between the software installation and the two-day trial that Mr Thammiah did not attend. Mr Singh agreed that on 16 or 17 May 2016, he was also present for a trial of the SICK system during which it was discovered that there was a calibration problem. Mr Singh said he could not recall whether Mr Thammiah had attended but he asserted that any data collected on that occasion was not useful because the measurements were off.

Mr Singh also gave evidence that, in view of the fact that he had attended the actual trial in place of Mr Thammiah, he approached Mr Soliman when he was next in the office and asked how they should go about cancelling the PO raised in favour of Novation. He said that Mr Soliman told him to leave that with him. Mr Singh said he never saw a report from Novation about this project, but did see one from the vendor, who submitted its own.

Mr Soliman claimed not to recall Mr Singh raising with him the fact that Mr Thammiah had not attended the trial and that the PO should therefore be cancelled. He gave evidence that, on the contrary, he recalled Mr Singh telling him Mr Thammiah was there for part of the trial. Mr Soliman claimed not to see how it could be possible for Mr Singh to raise the issue of cancelling the PO if Mr Thammiah actually attended the trial and it was Mr Singh who told him that. Ultimately, after extensive examination, Mr Soliman refused to either deny or accept as a possibility the proposition that Mr Singh had raised with him a suggestion that the PO for the project should be cancelled because of Mr Thammiah's non-attendance at the trial.

Mr Thammiah admitted during evidence that he did not in fact engineer, design or fabricate a bracket as quoted. He also gave evidence that, while he did attend a trial of this technology in Marulan for two days:

*...when we attended the trial, they realised during the first and second day subsequently that the data we were capturing was not accurate at all ... and the trial could not go ahead.*

He agreed that, because of the vendor's difficulty setting up the scanner equipment, the trial had to be postponed to a later date and he did not attend on that later occasion. Mr Thammiah gave evidence that, even though he only attended the failed set-up of the first two days of the trial:

*I guess from my perspective, what I saw was how it was implemented, and I guess some of the pain points, in terms of the software, and that was, I thought, enough for me to complete the trial with the information that I was given from the second trial.*

Mr Thammiah claimed that Novation's report included data from the trial that took place on the days he did not attend. He said he got this data from Mr Soliman, who got it from the technology vendor.

Evidence obtained by the Commission indicates that the official trial, once the scanner had been properly aligned and calibrated, took place on 20 and 21 June 2016, and that Mr Soliman asked the vendor to send the trial data directly to Mr Thammiah. This data was provided to him by the vendor in an email sent on 22 June 2016, into which both Mr Soliman and Mr Singh were copied.

Mr Soliman was also copied into an email from the vendor the following day, sending Mr Thammiah documentation relating to each vehicle scanned during the trial following Mr Soliman's further request for any photos or videos from the trial days to be sent to Mr Thammiah.

By his own admission, Mr Thammiah did not attend the official trial and he did not engineer or fabricate a mounting bracket for the scanner. The Commission is satisfied that Novation did not undertake any substantial work on this project but relied instead on information and data provided by others.

The Commission is satisfied that Mr Soliman knew that Mr Thammiah did not attend the official trial. That is why he asked the vendor to send Mr Thammiah the data, photographs and videos from the trial days. The Commission is also satisfied that Mr Soliman asked Mr Singh to attend the trial in Mr Thammiah's stead and that he told Mr Singh to leave it to him when the issue of cancelling the PO in favour of Novation was raised.

## The report

At 2.23 pm on Saturday, 2 July 2016, an email was sent to Mr Thammiah from Mr Soliman's personal email address, attaching a Word version of what appeared to be a finalised Novation scoping study report, dated 27 June 2016, concerning the vehicle dimension scanner trial. The cover email was blank. Only 10 minutes later, at 2.33 pm the same day, Mr Thammiah sent Novation's scoping study report in PDF format to Mr Soliman's RMS email address from Novation's email address. The attached report was almost identical to the report Mr Soliman had sent him minutes earlier in the Word version, except for a number of minor formatting differences in the PDF version.

Mr Thammiah gave evidence that he had no recollection of receiving the email from Mr Soliman attaching the Word version of the scoping study report on 2 July 2016, and it was not his recollection, nor did he believe, that Mr Soliman drafted the report and sent it to him before he resubmitted the same report to Mr Soliman. When Mr Thammiah was specifically asked whether he denied that this had happened, he responded:

*...it's come to light that I guess my recollection might not be as factual as I think it is, so when you put that proposition to me it's, it's a little bit difficult for me to answer I guess ... I do deny it from my recollection of events ... what I'm trying to allude to is the fact that I've, I've had to recognise that I do have logical flaws and that's why that particular question sort of stops me.*

Mr Thammiah agreed that Mr Soliman sent him data from the trial he did not attend for inclusion in the

report, that Mr Soliman provided the project background information and that they were more than likely together at Mr Soliman's house when that part of the report was drafted. Mr Thammiah did not concede that the report's assertion that "Novation Engineering performed an extensive in-field study on the dimension scanner" was false, claiming "it's true from the perspective that I did attend the first trial".

Mr Thammiah repeated his frequently proffered explanation for those instances discovered by the Commission where an email was sent to Novation from Mr Soliman's personal email address attaching a copy of Novation's report and shortly afterwards, Mr Thammiah submitted the same report to Mr Soliman's RMS email address from Novation's email. He said that he worked on these reports at Mr Soliman's house, in his room, on his computer, and that the email from Mr Soliman's email address could have been sent by either one of them. He disagreed that, if Mr Soliman had sent the email from his personal address, that meant that he could also have drafted the report. He said he could not recall who had sent the email and he did not know why he did not just send the report he worked on at Mr Soliman's house directly to RMS, but he denied that, in doing so, he was hiding Mr Soliman's involvement in the report's preparation.

Under examination by his counsel at the end of the public inquiry, Mr Thammiah agreed that he had "crossed boundaries" in relation to this project by not turning up to the "second" trial. He claimed not to have felt comfortable about that, but his concerns were allayed by Mr Soliman. He also claimed that, other than failing to turn up to the site and personally collecting the data from the trial, he did the rest of the work himself, including the analysis of the data sent to him by Mr Soliman. He gave evidence that he should have asked questions and pursued Mr Soliman further about how he was running these trials. He claimed he was being "led" by Mr Soliman, who "knew everything that was going on. He knew that all of it was fake".

Mr Thammiah was asked by his counsel how he could reconcile his evidence that he produced the scoping reports himself with his evidence that he did them at Mr Soliman's house, on Mr Soliman's computer, and with Mr Soliman sitting next to him providing input. Mr Thammiah responded:

*...one of the first questions I asked him was, was this okay to be doing the work together but I never, I just never gave him any acknowledgement because it was just, just simple work and simple documentation and I treated it like a review system for a project where I thought I'd be [taking] an iterative approach where I'd submit something, review, send back, comments, then change it and then submit again, so I thought*

*I was sort of bypassing that process by doing this with him.*

Mr Thammiah agreed with a proposition put by his counsel that "normally", he would follow an "iterative process", whereby his report would be sent off, corrected and then sent back to him and there would be a number of iterations of it before the final product. The Commission rejects Mr Thammiah's claim that he bypassed the "iterative process" he would normally undertake by having Mr Soliman review the contents of Novation's reports while he was with him, sitting at his computer, in his house. Mr Thammiah's own evidence was that Novation had never done any work before the contracts Mr Soliman awarded the company and did not do work for any agency or entity other than RMS over the relevant period. Mr Thammiah therefore could not "normally" have followed an "iterative process" in preparing scoping study reports, because he had completed no others.

Mr Soliman gave evidence that Mr Singh managed this project and that both Mr Singh and Mr Thammiah dealt with the vendor and told him a bit about the trial. He claimed he was not sure whether he also dealt with the vendor; although "potentially" he did.

Evidence obtained by the Commission indicates that Mr Soliman was, from approximately 23 May 2016, in regular communication with representatives from SICK, the vendor of the dimension scanner being trialled, concerning the calibration and certification of the scanner and the set-up of the trial. The language of his communication with Steven Down, industry specialist at SICK, and the primary contact for the trial, indicates that, while Mr Singh may have been handling the day-to-day mechanics of the project, Mr Soliman had initiated and was directing it:

*Lets [sic] not worry too much about funding more units this financial year; we can still procure next financial year. The KEY at the moment is to ensure **calibration** and **certification**.*

*Until I have the trial unit at marulan [sic] calibrated (working to the highest accuracy possible) and certified for enforcement, I would not yet have proven concept and definitely can not procure more units (via tender or otherwise).*

On 9 June 2016, Mr Down sent Mr Soliman a draft report concerning the steps taken by the vendor to realign and recalibrate the SICK vehicle profile system following the realisation during the initial testing that one of the scanners had been misaligned when installed. The report outlined that, following realignment and re-calibration, 17 vehicles had been run through the system and the results indicated that the system was now operating with acceptable accuracy.

The evidence indicates that Mr Soliman knew that the testing of the system outlined in Mr Down's draft report was not part of the official trial. He responded to Mr Down that he had reviewed the document and asked:

*Could you pls work with Jai [Mr Singh] to agree on **when the trial formally begins** so we can begin collecting data. I assume you will attend at marulan [sic] with Jai on the first day or two? I'd like to give this proof of concept every chance to pass so we can progress. (Emphasis added)*

On 14 June 2016, Mr Down sent Mr Soliman a finalised version of his report on the system following realignment and recalibration. Mr Soliman forwarded Mr Down's report to his personal email address on 1 July 2016, the day before a finalised version of Novation's report on the technology trial was sent to Mr Thammiah from Mr Soliman's personal email address.

A careful comparison of the report sent to Mr Soliman by Mr Down on 14 June 2016, and the Novation report submitted to RMS on 2 July 2016, indicates some critical similarities. The most significant is that the data set out in the Novation report is derived from the data that Mr Down's report contained; that is, the data from the 17 vehicles that were tested to ensure that the system was working accurately following its realignment and recalibration after the aborted first trial and before the official trial had taken place.

Table 1.0 in Novation's report, which claims to display "a subset of the vehicle length data collated during the trial and associated accuracies", records measurements for vehicles 1915 to 1928 (14 vehicles). Mr Down's report sets out a table for vehicles 1915 to 1931 (17 vehicles) containing the system's measurements of speed and width and the RMS manual measurements of width for each vehicle, with analysis of the deviation between the results and the system's error percentage. Every measurement in table 1.0 in Novation's report is derived from the table in Mr Down's report, although approximately half-way down Novation's table, the measurements no longer correlate with the same vehicle numbers listed in Mr Down's report. An accompanying chart, representing length error deviation, and scanner images have been copied from Mr Down's report and are in Novation's report. The same duplication between the data, accompanying charts and scanner images in both reports occurs in relation to width and height measurements.

In short, the entirety of the data reported on by Novation from the trial of the SICK dimension scanner was taken from the report by the vendor provided to Mr Soliman on 14 June 2016. The data was collected from only 17 vehicles and was not collected by Mr Thammiah or anyone else in the context of an official trial.

The data in Novation's report is *not* the data provided to Mr Thammiah by Mr Down at Mr Soliman's request following the official trial on 20 and 21 June 2016.

Novation's report included an executive summary, a project background section and a field trial results summary. Notwithstanding the fact that it contained no data from the actual official trial on 20 and 21 June 2016, the report nevertheless claimed that Novation had performed an extensive in-field study and recommended that RMS proceed with enforcement certification for this device, or other suitable vehicle dimension scanners for use in heavy vehicle safety stations and other high-risk assets, such as tunnels and bridges in NSW.

Mr Soliman agreed during his evidence that he sent Novation's scoping study report to Mr Thammiah from his personal email address on 2 July 2016; although he claimed not to recall creating that report. He also agreed that he included some of the data, in the same format, from the SICK report, which had been sent to him some weeks earlier. However, Mr Soliman asserted that it had been Mr Thammiah himself who had collected that data in the first place, and that it included both manual measurements and data collected by the vendor's software, which had been installed on Mr Thammiah's laptop. He claimed he had been told this by either Mr Singh or Mr Thammiah himself. He said that the purpose of having an independent person at the trial, such as Mr Thammiah, "was to make sure the data wasn't cleansed".

The Commission accepts the submission of Counsel Assisting that an irresistible inference arises that Mr Soliman drafted Novation's report and on 2 July 2016 sent it in Word format to Mr Thammiah from his personal email address. Only 10 minutes later, Mr Thammiah submitted the report in PDF format to Mr Soliman's RMS email address representing it as the work of Novation.

The Commission accepts the submission of Counsel Assisting that the gap of only 10 minutes makes it inherently implausible that Mr Thammiah sent the report to himself using Mr Soliman's personal email address while he was working on Mr Soliman's computer, and then shortly afterwards submitted it to RMS from Novation's email account, as was submitted on Mr Thammiah's behalf. The Commission finds that, if this had been the case, Mr Thammiah necessarily accessed Novation's email account at 2.33 pm to submit the report, in which case there would have been no need to take the first step of using Mr Soliman's personal email address at 2.23 pm to send it to himself.

Mr Soliman did not deny sending Novation's report to Mr Thammiah on 2 July 2016 using his personal email address, and the Commission is satisfied that he did so in order to hide his involvement in drafting the report.



The inference, that it was Mr Soliman and not Mr Thammiah who drafted Novation's report, is considerably strengthened by the evidence that the data in Novation's report was not the data collected at the official trial on 20 and 21 June 2016, which was sent to Mr Thammiah by the vendor, but the data contained in a report sent by the vendor in a report to Mr Soliman on 14 June 2016. Mr Soliman forwarded the vendor's report to his personal email address on 1 July 2016, the day before he sent a finalised version of Novation's report to Mr Thammiah in Word format.

The Commission rejects Mr Soliman's evidence that he believed that Mr Thammiah himself had collected both the manual measurements and the data captured by the vendor's software installed on his laptop. The Commission is satisfied that Mr Soliman knew that the data provided to him by Mr Down, when he sent through the post-realignment and post-calibration report on 14 June 2016, was not data that came from any official trial. He knew that it had come from a small sample of 17 vehicles and was collected and collated to satisfy RMS that the technology was working accurately ahead of the official trial.

### What happened to the report?

Some months after Mr Thammiah submitted Novation's report by email to Mr Soliman's RMS email address, Mr Singh sent an email to Mr Soliman on 8 September 2016, asking for a copy of Novation's trial report for this project, so that he could send it to the RMS legal branch. SICK had been working in the meantime to put together the paperwork needed for RMS to certify the technology as legally suitable for heavy vehicle enforcement in NSW. Evidence obtained by the Commission indicates that Mr Down was communicating with Mr Soliman about this process throughout July and August 2016. When Mr Down sent the necessary documentation to Mr Soliman on 8 August 2016, and asked that he review it with the RMS legal team, Mr Soliman told him that it would be Mr Singh who would "seek legal endorsement" for the technology on his return from leave in a couple of weeks.

In early September 2016, Mr Singh apparently took over the process and asked Mr Soliman for a contact in the legal branch. He advised that he wanted to send them Novation's trial report "in case they want to see the trial results". Mr Soliman responded, "No legal contact. [Paul] Hayes will know who to talk to. I'd say the SICK report is better to send to legal".

During the public inquiry, it was put to Mr Soliman that he was not prepared to give the Novation report to the legal branch because it would be clear that elements of the Novation report reflected the content of the

vendor's report. Mr Soliman denied this, asserting that it was the manufacturer's data that was required for certification. When it was put to Mr Soliman that a report from an independent party that ensured the trial data had not been "cleansed" should have been what was sent to the legal branch to assist the certification application and was in fact the whole reason Novation had been engaged, Mr Soliman responded, "that would have been a better way to go about it, yeah".

The Commission finds that Mr Soliman, as its author, knew that Novation's report would not withstand scrutiny by either Mr Singh or the RMS legal branch and that, if compared with the vendor's own report, it could not be considered legitimate, independent, accurate or of any use to RMS. The Commission finds that it was for that reason that he did not provide it to Mr Singh and why he instructed Mr Singh to forward only SICK's report to assist the legal branch to certify the equipment for RMS's legal enforcement purposes in September 2016.

### The sixth contract – in-vehicle mounted tablet scoping study

On 8 June 2016, Mr Soliman emailed Mr Singh telling him he had left a PO for Mr Singh to "urgently progress". He advised that they had some "excess money" from another area and an opportunity to get what he called an "innovation trial" underway. He explained:

*In short, I'm testing the idea of removing the big expensive toughbooks from vehicles and replacing them with a ruggedised tablet mounted in front of the vehicle so IVR's can use as a portable inspection tool (rather than having a toughbook stuck in the car always).*

*Anyway, pls sign, submit to finance, and enter into CM21 tomorrow when youre back as a matter of urgency so we secure the funds.*

The PO request signed by Mr Soliman, and left for Mr Singh to process, attached Novation's quote numbered "094" in the amount of \$92,345, and was for the procurement, field trial and scoping study of selected ruggedised tablet options. The quote also itemised the provision of engineering/design and fabrication of three in-vehicle dash-mounting brackets for selected tablets and the provision of a report of the trial results with recommendations.

Mr Soliman gave evidence that the RMS inspectors were using Panasonic Toughbook laptops, which were "end-of-life" and cost approximately \$10,000 each. He claimed that RMS was looking for different devices, which were ruggedised, but cheaper. He said he gave the contract to Novation because Mr Thammiah "could do the work but obviously I favoured him".

The Commission's investigation found no evidence that Novation's quote for this project was ever submitted by Mr Thammiah to Mr Soliman. Instead, the Commission located an email sent by Mr Soliman to Mr Thammiah on 17 June 2016, in which he attached Novation's quote 094 and stated "here is the quote for the new in-vehicle mounted tablets scoping study so you can create the invoice accordingly". Mr Soliman agreed that it was possible that he had drafted the quote he sent to Mr Thammiah on 17 June 2016, suggesting that was how he conveyed to him the scope of works involved in the projects. He denied coming up with Novation's quoted price, however, claiming the prices were always Mr Thammiah's.

Mr Singh gave evidence that all he did in this matter was raise the PO, sending the necessary documentation to the finance section, as directed. He said he did not understand what the urgency was, but understood that there was money from another unit that needed to be spent by the end of the financial year. Mr Singh said that he did not know whether a field trial of tablets took place or whether there was any procurement of tablets by Novation, and he did not receive a report in relation to this project.

The same day as he was sent the quote by Mr Soliman, Mr Thammiah submitted an invoice for this project for the amount of \$92,345. Novation was paid this amount in full by RMS on 22 June 2016, notwithstanding the fact that no report had been submitted at that time.

The Commission is satisfied that, when Mr Thammiah submitted Novation's invoice on 17 June 2016, in the sum of \$92,345, he did so knowing that he had done none of the work for which he was invoicing.

## What was done?

Mr Thammiah gave evidence that he was involved in the trial of ruggedised tablets, but he could not recall where the trial took place, how many tablets were trialled, or how the trial was conducted. He said he thought Mr Soliman also attended.

Mr Thammiah was taken through Novation's quote for this project. He agreed that he did not procure the tablets that were trialled, even though, according to his evidence, procurement constituted the majority of the quoted price. Mr Thammiah agreed that he had also done none of the engineering, design or fabrication in his quote. He claimed that he raised the need to adjust his quote with Mr Soliman, but was advised by Mr Soliman that he could not change the value of the PO.

He claimed that Mr Soliman suggested that, because the PO could not be changed, Mr Thammiah should lower his next quote for RMS or undertake more work without charging. Mr Thammiah gave evidence that he believed

he did do this after he took over the distributorship of IRD products. He gave as an example arranging for parts to be delivered free-of-charge in response to issues arising with missing parts. He claimed that he was told that, from a practical perspective, the way things operated meant that he should do some extra work for RMS for free to account for being overpaid on this particular project.

## The report

On 19 July 2016, from his personal email address, Mr Soliman sent Mr Thammiah a preliminary draft in Word version of Novation's "In-vehicle mounted tablet scoping study". The draft report, dated 8 July 2016, contained an executive summary, which included a conclusion about the three models of tablet found to be most suitable following the trial.

The draft report also contained some very basic notes about the five models of tablet chosen to test against criteria, including brightness, weight, handling and ruggedness. These notes had been previously sent on 4 July 2016 by Mr Soliman to Mr Thammiah in an email from his personal email address. The remainder of the draft was another Novation report concerning a thermal scanner trial, which had been sent to Mr Thammiah from Mr Soliman's personal email address on 12 July 2016, but was not submitted by Mr Thammiah to RMS until 28 July 2016. The thermal scanner scoping study report was evidently used as the "template" for the tablet scoping study report.

On 29 July 2016, Mr Soliman sent an email to Mr Thammiah from his personal email address with the subject line "tablets trial", containing two website links to product information about the recommended tablets and the following instructions about the completion of the report:

*add tables for all kpi's [key performance indicators]*

*comment on outstanding issues with each unit for each kpi*

*graphs*

On 11 August 2016, Mr Thammiah submitted in PDF version to Mr Soliman the "final version" of Novation's in-vehicle mounted tablets scoping study report, dated 8 July 2016. The project background section of the report stated that five in-vehicle mounted tablets had been selected to trial and that RMS was looking to:

*...mount such technology within RMS enforcement vehicles as a replacement for the current Panasonic Toughbook fleet which will be end-of-life within 2 years and require replacement; this is the primary reason that RMS instigated this scoping study.*

The final report was consistent with the instructions sent by Mr Soliman on 4 and 29 July 2016. The report claimed that the study had been conducted in two parts: the first part collected feedback from users (RMS inspectors) about the usability of the hardware itself, and the second part involved collecting and analysing feedback from inspectors using the tablets to conduct actual inspections and truck screening. The report's recommendation was that RMS proceed with the replacement of the current fleet of Panasonic Toughbooks, "when they are end-of-life", with either one of two models of tablet recommended following the trial.

Mr Thammiah agreed that Mr Soliman sent him emails on 4 and 29 July 2016 with information relevant to the preparation of the report for this trial. However, he claimed not to recall receiving the email on 19 July 2016 from Mr Soliman attaching a draft report, and stated that he believed that he had prepared that report and sent it to himself from Mr Soliman's personal email address because he worked on it at Mr Soliman's house, on his computer.

Mr Thammiah agreed that it was likely that Mr Soliman helped him with the project background section of the report and that he would have written the report when he and Mr Soliman were together at Mr Soliman's house. He said this is where he did all of his scoping study reports after his separation from his wife around the end of May 2016, whereas he prepared quotes and invoices on his laptop wherever he was:

*...because they were just one-pagers and you just basically copied and pasted from the last one. They're quite easy documents. I didn't need his assistance.*

Mr Thammiah gave evidence that he did conduct a field trial of the tablets, but not an "extensive" one as claimed in the report. He said he used that word in every report but claimed it was more "just general jargon that you throw into a document" than an attempt to justify his fee to RMS. Mr Thammiah gave evidence that he believed he obtained the specifications for each of the five tablets that were tested from the manufacturers' websites. He disagreed that it was detailed information, stating that it could be obtained by Googling the product and looking at its specifications on any number of websites.

Mr Thammiah had no recollection about many of the key aspects of the trial, including details of the two parts of the study, how many RMS personnel provided feedback about the tablets, details about the tablets themselves, who took the photographs included in the report, how the tablets were tested, or how he reached the opinions set out in the report.

Mr Thammiah agreed that the statements in the report – that the tablets were tested by being placed outside for 30 minutes in the rain and exposed to a splash of

water – were "entirely untrue". He said that he intended to but did not test whether the tablets met the key performance indicator of being protected against low pressure water and splash-proof from all directions and that Mr Soliman told him he could get this information online and compare the water resistance of the tablets in that way. Mr Thammiah gave evidence that the key performance indicator about the drop-shock resistance of the tablets was also not tested and the relevant information contained in the report was also obtained online. Mr Thammiah stated that he got the majority of the information in this and other Novation reports from the internet.

Mr Thammiah gave evidence that his recollection was that all of the scoping studies and trials followed the same pattern. Before the end of May 2016, he would prepare them either at his house or Mr Soliman's house, and, after that date, the reports were prepared at Mr Soliman's house. If he did them at his own house, he would take a draft of the report over to Mr Soliman, either on a USB or his laptop, and finish them at Mr Soliman's house.

Mr Thammiah was taken to evidence he had given the previous year during a compulsory examination at the Commission. On that occasion, he claimed that he had taken a physical version of his draft report over to Mr Soliman's house and told him it was his report so far. Mr Soliman then emailed his report back to him from his personal email address on 19 July 2016. Mr Thammiah stated that he gave a "false answer" during his compulsory examination, but at the time he did not know it was false and he thought he might have misheard the question.

Mr Thammiah maintained his evidence that he "recalled" creating invoices, creating quotes and doing scoping reports. In relation to the evidence that Mr Soliman sent him Novation's quote on 17 June 2016 so that he could prepare the invoice, Mr Thammiah stated that he had no idea why that needed to happen, but that it could have been because he had prepared the quote at Mr Soliman's house.

During the public inquiry, Mr Thammiah later gave evidence that Mr Soliman never prepared a Novation document to his knowledge; however, the one document he was uncertain about was the report in relation to the ruggedised tablet trial. Mr Thammiah claimed that:

*I definitely helped prepare the report but I just don't feel right about that report ... it just sticks out as a sore thumb in terms of the projects and reports that were written ... I think it was partly because of the way the trial was conducted ... the purchasing of those ruggedised tablets did not happen so I also see that the trial was not effectively run.*

Mr Soliman denied controlling the contents of Novation's report by sending a Word version of a scoping study and a number of emails containing information relevant to the trial. He said that Mr Thammiah would just have asked him about certain things and, if he had asked him for his thoughts, he was happy to help him; he was his friend. He said he did not recall creating the report or being at the trial. When it was put to Mr Soliman that he had asked Mr Thammiah to convert the Word version of the report he sent him from his personal email address to a PDF version, Mr Soliman responded, "maybe".

In this particular instance, the Commission does not accept the submissions of Counsel Assisting that it is more probable than not that Mr Soliman finalised the report. The Commission is satisfied that the totality of the evidence indicates that it is more likely that it was Mr Thammiah who substantially drafted the report that he submitted as the final version on 11 August 2016.

However, Mr Soliman was greatly involved. The Commission is satisfied that Mr Soliman sent Mr Thammiah instructions about what to include in the report on 4 and 29 July 2016. Mr Soliman commenced a draft report, which included an executive summary, and sent it to Mr Thammiah from his personal email address on 19 July 2016. Mr Soliman assisted Mr Thammiah with the project background set out in the report.

The Commission is satisfied that Mr Soliman came up with the "innovation trial" to profit Novation, rather than meet any current business need for RMS. The in-vehicle mounted tablets scoping study results and recommendations would be redundant by the time there was any need to refer to them. According to Novation's scoping study report itself, the devices then in use by the inspectors were not due to reach their "end-of-life" for another two years; by which time, the tablets chosen to trial would no longer constitute leading technology in the field. Mr Soliman's evidence was that the trial and scoping study was initiated to find cheaper alternatives to the devices then in use; yet, price was not one of the criteria against which the trialled tablets were compared, and cost effectiveness was not a factor referenced anywhere in the report.

There was no trial of the tablets as described in the scoping study report. Mr Thammiah admitted that the information about the tablets' respective water and drop-shock resistance was derived from product information sourced online. Mr Thammiah also admitted that there was no "extensive" in-field study, that that description was just "jargon", and that the information in this report was substantially derived from online searches. The Commission finds that Mr Thammiah's own evidence gives rise to the inference that there was no trial at all of the chosen tablets against specific KPIs and that the

information about test results was substantially fabricated using information from the internet.

The Commission is satisfied that, between approximately 4 July and 11 August 2016, Mr Soliman and Mr Thammiah engaged in a deliberate course of conduct to fabricate the results of a trial and scoping study and prepare a report designed to deceive RMS that work had been undertaken by Novation to justify the payment of about \$90,000.

## Corrupt conduct

The Commission's approach to making findings of corrupt conduct is set out in Appendix 2 to this report.

First, the Commission makes findings of relevant facts based on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A).

With respect to the jurisdictional requirements of s 13(3A) of the ICAC Act, the Commission considers whether, in the case of subsection 9(1)(a), if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a criminal offence. In the case of subsections 9(1)(b) and 9(1)(c) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those subsections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

## Mr Soliman

Mr Soliman misused his position as manager of the RMS HVP Unit to arrange for six RMS contracts to be awarded to Novation, his friend's company, being the:

- November 2015 contract for the procurement of 21 under-vehicle inspection cameras for which Novation was paid \$45,780 by RMS
- December 2015 contract to undertake mobile ANPR technology trials and provide a scoping study for which Novation was paid \$83,097 by RMS



- February 2016 contract for a field trial and scoping study of thermal vehicle scanner technology, for which Novation was paid \$76,274 by RMS
- March 2016 contract for trialling of portable weigh scales, for which Novation was paid \$25,129.50 by RMS
- May 2016 contract for a field trial and scoping study of a vehicle dimension scanner, for which Novation was paid \$23,089 by RMS
- June 2016 contract for the procurement, field trial and scoping study for ruggedised tablets, for which Novation was paid \$92,345 by RMS.

In each case, Mr Soliman did so for the purpose of improperly benefiting Mr Thammiah and himself.

Mr Soliman's conduct was corrupt for the purposes of both s 8(1)(b) and s 8(2A)(c) of the ICAC Act. It involved the dishonest and partial exercise of his official functions and dishonestly obtaining, or assisting in obtaining, the payment or application of public funds for private advantage.

Mr Soliman's official functions included the awarding of contracts for purposes consistent with the objectives and responsibilities of the HVP Unit. He exercised these functions partially by awarding the six contracts to Novation, a company he had assisted his friend Mr Thammiah to establish for his and Mr Thammiah's financial benefit.

He exercised his official functions dishonestly to obtain an advantage for Novation when, by his conduct, he represented that Novation could do, was doing and had done work; in fact, Novation could not and did not undertake the work. He took steps to conceal his own involvement in the performance of Novation's work and he did not disclose facts he had a duty to disclose, including his conflict of interest. The Commission is satisfied that he knew what he was doing was wrong. Mr Soliman's conduct was intentional, planned and ongoing, and resulted in the misuse of a substantial amount of public money for private advantage.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 192E of the Crimes Act, which has been in force at all relevant times and provides:

#### **192E Fraud**

- (1) *A person who, by any deception, dishonestly —*
- (a) *obtains property belonging to another, or*
  - (b) *obtains any financial advantage or causes any financial disadvantage,*
- is guilty of the offence of fraud.*

The term "deception" is relevantly defined in s 192B of the Crimes Act as:

*...any deception, by words or other conduct, as to fact or as to law, including—*

- (a) *a deception as to the intentions of the person using the deception or any other person, or*
- (b) *conduct by a person that causes a computer, a machine or any electronic device to make a response that the person is not authorised to cause it to make.*

- (2) *A person does not commit an offence under this Part by a deception unless the deception was intentional or reckless.*

"Dishonest" is generally defined in s 4B of the Crimes Act as "dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people". Whether conduct is dishonest will depend on all of the circumstances (*Krecichwost v R* [2012] NSWCCA 101).

Obtaining a financial advantage or causing a financial disadvantage is defined in s 192D of the Crimes Act to include obtaining a financial advantage for oneself or another person, inducing a third person to do something that results in oneself or another person obtaining a financial advantage, or that results in another person suffering a financial disadvantage, irrespective of whether the financial advantage or disadvantage is permanent or temporary. RMS is a "person" for the purposes of this section (s 21 *Interpretation Act 1987*). The financial advantage must be obtained by the deception; that is, it is necessary for a causal connection to be established between the deception and the obtaining of money (see *Ho and Szeto v R* (1989) 39 A Crim R 145).

For the purpose of s 9(1)(a) of the ICAC Act, Mr Soliman's conduct could constitute or involve a criminal offence of fraud pursuant to s 192E of the Crimes Act and aiding and abetting Mr Thammiah in the commission of fraud offences pursuant to s 192E of the Crimes Act.

For the purpose of s 13(3A), the Commission is satisfied that, if the essential facts it has found were to be proved on admissible evidence to the criminal standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman's conduct constituted or involved offences of fraud pursuant to s 192E of the Crimes Act and aiding and abetting Mr Thammiah in the commission of fraud offences pursuant to s 192E of the Crimes Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.



In considering s 9(1)(a) of the ICAC Act, it is also relevant to have regard to the common law offence of misconduct in public office. The elements of this offence were considered by the NSW Court of Criminal Appeal in *Maitland v R; Macdonald v R* [2019] NSWCCA 32. The Court reiterated (at [67]) the formulation of the elements of the offence originally addressed in *R v Quach* (2010) 201 A Crim R 522 at [46] and approved in *Obeid v R* [2015] NSWCCA 309 at [133]. The Court confirmed that the elements of the offence are:

- (1) *a public official;*
- (2) *in the course of or connected to his public office;*
- (3) *wilfully misconducts himself, by act or omission, for example, by wilfully neglecting or failing to perform his duty;*
- (4) *without reasonable excuse or justification, and;*
- (5) *where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.*

The offence is made out if the public official is reckless as to whether their conduct was a breach of their duties as a public official or where the public official knows the conduct was such a breach (see *R v Obeid* (No. 11) [2016] NSWSC 974).

In *Maitland v R; Macdonald v R* the Court held (at [84] and [87]) that for the mental element of the offence of misconduct in public office to be made out, the prosecution must also prove beyond reasonable doubt that the power in question would not have been exercised but for the illegitimate purpose of conferring a benefit on the relevant person. The proper question to satisfy the mental element was whether but for the improper purpose the consent and licence (relevant to that case) would not have been granted. The Court suggested, however, that the improper purpose need not be the sole purpose of the accused.

For the purpose of s 9(1)(a) of the ICAC Act, Mr Soliman's conduct could constitute or involve a criminal offence of misconduct in public office.

For the purpose of s 13(3A), the Commission is satisfied that, if the essential facts it has found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman had committed the common law offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied, for the purpose of s 74BA of the ICAC Act, that Mr Soliman's conduct is serious corrupt conduct. Mr Soliman's conduct involved his participation in a deliberate and dishonest scheme or a joint corrupt enterprise with his friend, Mr Thammiah, to divert a significant amount of public money, within one financial year, from the important road safety functions of the unit he managed, in order to profit Novation, a company he had encouraged and assisted Mr Thammiah to create for this purpose and from which he also benefitted financially.

His conduct involved a significant degree of planning and deceit over a period of about 12 months. He used his position as the manager of the HVP Unit to control every aspect of the contracts he awarded Novation; from the invention of spurious innovation projects for which to engage the company, to his direction of Mr Thammiah's conduct of these projects and interaction with RMS, to his own preparation of reports designed to look like the legitimate technical work of an independent contractor.

As a manager, Mr Soliman held a position of trust within RMS and his conduct involved a significant breach of trust. The contracts he awarded his friend's company provided no benefit, but considerable financial disadvantage, to RMS. His conduct would impair public confidence in public administration, given his position, the responsibilities of his position and the substantial quantum of public funds involved.

## Mr Thammiah

Mr Thammiah submitted eight invoices to RMS in relation to the following contracts:

- November 2015 contract for the procurement of 21 under-vehicle inspection cameras, for which Novation was paid \$45,780 by RMS
- December 2015 contract to undertake mobile ANPR technology trials and provide a scoping study, for which Novation was paid \$83,097 by RMS
- February 2016 contract for a field trial and scoping study of thermal vehicle scanner technology, for which Novation was paid \$76,274 by RMS
- March 2016 contract for trialling of portable weigh scales, for which Novation was paid \$25,129.50 by RMS
- May 2016 contract for a field trial and scoping study of a vehicle dimension scanner, for which Novation was paid \$23,089 by RMS

- June 2016 contract for the procurement, field trial and scoping study for ruggedised tablets, for which Novation was paid \$92,345 by RMS.

In each case, Mr Thammiyah knew, when he submitted the invoices, that he had not done, or would not do, most of the work for which he invoiced and that Mr Soliman would use his position at the RMS to dishonestly arrange for payment of the invoices.

The Commission accepts the submissions of Counsel Assisting and finds that Mr Thammiyah knew of the essential acts performed by Mr Soliman and intentionally assisted Mr Soliman to perform those acts. Mr Thammiyah knew that Mr Soliman was performing work that Novation was contracted to perform, and that Novation had not performed the services or provided the equipment for which it was paid. Mr Thammiyah knew that his close friendship with Mr Soliman was the reason Novation was being favoured.

Mr Thammiyah's conduct was corrupt for the purposes of both s 8(1)(a) and s 8(2A)(c) of the ICAC Act. It involved conduct that adversely affected the honest and impartial exercise of Mr Soliman's official functions. Mr Thammiyah's conduct would also impair public confidence in public administration, in that it involved him dishonestly obtaining or assisting in obtaining, and dishonestly benefiting from, the payment or application of public funds for private advantage.

Mr Thammiyah's conduct comes within s 9(1)(a) of the ICAC Act as it could constitute or involve offences of fraud under s 192E of the Crimes Act and/or an offence of aiding and abetting the commission of an offence of misconduct in public office by Mr Soliman.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied for each of the six individual contracts for which Mr Thammiyah submitted invoices, that, if the essential facts it has found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find to the criminal standard that Mr Thammiyah had committed the criminal offences of fraud under s 192E of the Crimes Act and/or an offence of aiding and abetting the commission of misconduct in public office by Mr Soliman. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC is satisfied.

The Commission is also satisfied, for the purpose of s 74BA of the ICAC Act, that Mr Thammiyah's conduct is serious corrupt conduct. Mr Thammiyah's conduct involved his participation with a public official over an extended period of time in a deliberate and dishonest scheme to obtain over \$345,000, being a significant amount of public money. His conduct provided no benefit to RMS, but considerable financial disadvantage.

## Section 74A(2) statements

In making a public report, the Commission is required by the provisions of s 74A(2) of the ICAC Act to include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- the taking of action against the person for a specified disciplinary offence
- the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.


An "affected person" is defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

The Commission is satisfied that Mr Soliman and Mr Thammiyah are "affected" persons for the purpose of s 74A(2) of the ICAC Act.

## Samer Soliman

Mr Soliman's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, emails from Mr Soliman's personal email account to Mr Thammiyah, emails to and from Novation's email account, WhatsApp messages between Mr Soliman and Mr Thammiyah, and evidence of a significant number of Novation documents located on Mr Soliman's personal computer.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Soliman for offences against s 192E of the Crimes Act, for the offence of aiding and abetting Mr Thammiyah in the commission of offences against s 192E of the Crimes Act, and for the common law offence of misconduct in public office, in relation to his conduct in using his position at RMS to award six contracts to Novation and to dishonestly approve and cause payment by RMS of invoices submitted by Novation in relation to those contracts, which he knew to be false.



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Mr Soliman's employment with RMS was terminated for serious misconduct with effect from 26 February 2019. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

### **Stephen Thammiah**

Mr Thammiah's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, emails from Mr Soliman's personal email account to Mr Thammiah, emails to and from Novation's email account, WhatsApp messages between Mr Soliman and Mr Thammiah, financial records relating to Novation, and evidence of a significant number of Novation documents located on Mr Soliman's personal computer.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Thammiah for offences against s 192E of the Crimes Act, and for the offence of aiding and abetting Mr Soliman in the commission of misconduct in public office, in relation to his conduct between 15 December 2015 and 18 June 2016, in submitting eight invoices to RMS totalling over \$345,000, which he knew to be false, in the knowledge that Mr Soliman would use his position at RMS to dishonestly approve payment of those invoices to obtain a financial advantage for Novation.

## Chapter 4: The “golden ticket” – Novation is appointed IRD’s sole NSW distributor

The subsequent conduct of Mr Soliman and Mr Thammiah examined by the Commission arose from Novation’s appointment as IRD’s distributor of scales in NSW. As set out below, between April and November 2016, Mr Soliman used his position as manager of the HVP Unit to manipulate IRD into replacing ELWC, its local supplier of portable weigh scales to RMS for many years, with Novation.

A key aspect of the Commission’s investigation focused on Novation’s ability to supply the product and services it was contracted and paid to provide. The Commission therefore rejects the submission made on behalf of Mr Soliman that the matter relating to the award of the exclusive licence to Novation for the distributorship of IRD scales in NSW was outside the terms of reference of the Commission’s investigation. The circumstances in which IRD came to appoint Novation as its sole NSW distributor of spare parts and scales, and the part Mr Soliman played in that appointment, are self-evidently matters relevant to Mr Soliman’s performance of his public official functions in awarding RMS work to Novation for the supply of those spare parts and scales.

### ELWC and IRD

IRD is a Canadian company that specialises in highway traffic management and supplies weight enforcement systems and products around the world. In August 2003, IRD signed a purchase agreement for all of the traffic and telematics assets of the German company PAT GmbH located in Europe and the United States. At this time, the Australian distributor of PAT’s products, including the weigh scales used by RMS, was ELWC, a family-owned, NSW-based company. IRD decided to continue to conduct business in Australia in partnership with ELWC and, in November 2003, the two companies entered a distribution agreement, granting ELWC the exclusive right to sell and service IRD’s products in Australia and New Zealand.

By the beginning of 2016, ELWC had been in a partnership with PAT/IRD for many years. By this time, IRD had conducted business with RMS for over a decade exclusively via its partnership with ELWC. During this period, ELWC’s managing director died and his son, Glen Doherty, took over management of the company.

### ELWC performance issues

In approximately 2015, Rish Malhotra became IRD’s vice president of international business and inherited the management of IRD’s distribution relationship with ELWC in Australia. On 21 January 2019, in the course of the Commission’s investigation, Mr Malhotra provided a written response to the Commission’s questions through IRD’s Australian lawyers.

Mr Malhotra advised that IRD had a booth at the Intertraffic Conference held in Amsterdam in April 2016. Both Mr Hayes and Mr Soliman attended the conference and visited IRD’s booth, where Mr Soliman introduced Mr Hayes to Mr Malhotra. They “provided negative and extremely concerning feedback” about ELWC’s ongoing service of IRD’s portable static axle weigher (SAW) scales used by RMS. Mr Soliman recommended that IRD either work with ELWC to resolve the performance issues being experienced or consider alternative vendors for their products who could better service RMS’s requirements. Mr Hayes told him that there would be a tender to replace the approximately 550 scales in the RMS fleet in a few months and that these performance issues needed to be fixed if IRD/ELWC were interested in participating in the upcoming tender and any future business.

Mr Hayes told the Commission that part of the discussion he and Mr Soliman had with Mr Malhotra concerned the alleged lack of adequate local support for the IRD products provided by ELWC. Mr Hayes said that he told Mr Malhotra that, unless IRD could find local agents to support its equipment, RMS would not buy that equipment in the future.



On 13 April 2016, Mr Malhotra emailed Mr Doherty and told him of the meeting with Mr Hayes and Mr Soliman and their dissatisfaction with ELWC.

On 15 April 2016, Mr Malhotra emailed Mr Hayes, copying Mr Soliman, asking for “specifics” about concerns with ELWC’s level of service provision. Mr Hayes gave evidence that he did not respond to Mr Malhotra, but referred the matter to Mr Soliman. He told the Commission he expected that Mr Soliman would then go into the details of the problems he was having.

On 30 May 2016, Mr Soliman sent Mr Malhotra an email requesting an urgent teleconference between an IRD director or its most senior representative, himself and Mr Hayes, noting:

*Unfortunately the performance of ELWC continues to degrade further and I no longer see a way forward. We now need to urgently discuss with IRD other strategies to maintain the IRD portable weigh scale fleet which RMS have (approximately 500 units) and procure further units for an asset replacement program we will be kicking off now.*

On 27 May 2016, Mr Soliman sent an email to the four sector managers of the state’s heavy vehicle inspectors, advising that he had been managing ELWC’s performance over the past couple of months due to poor performance and noting that ELWC had put in place measures and new resources to improve response times and other issues. He asked for feedback from their respective teams about improvements, if any, of the maintenance/certification of the IRD/PAT scales over the previous month.

On 30 May 2016, Raymond Jenkins, sector manager for Sydney, reported back to Mr Soliman, attaching a complaint from Mr Jones, operations manager for Sydney West within the Sydney sector from April 2014, that little had changed and that there was a lack of parts to repair the failing, out-of-date PAT scales and long delays by ELWC to manufacture parts and perform repairs.

On 7 June 2016, Mr Soliman emailed the sector managers reminding them to give him feedback about ELWC’s performance as he had only received feedback by then from the Sydney sector. He said he was keen to hear positive feedback as well as negative.

On 15 June 2016, one of the other sector managers indicated in an email to Mr Soliman that his sector’s main issue with ELWC was that calibration/certification certificates were not being supplied. These certificates were necessary for production at court, should there be any dispute about the accuracy of the scales as part of enforcement proceedings.

There was other evidence before the Commission of performance issues with ELWC. Mr Jones told the Commission that part of his role involved managing repairs of the inspectors’ equipment, including scales. He said that, if he could not do the minor repairs and have the scales back on the road himself, he would send them to ELWC for repair while that company still had the contract.

He explained that, as well as being the distributor and agent for the IRD PAT scales mainly used by RMS, ELWC was the certifier for these scales. He confirmed that there was an issue with ELWC’s performance arising from delays in repairing the scales. Mr Jones stated that there was no issue with Mr Doherty making his own parts, given that the scales were out of warranty and he was the contractor, as long as the scales were fixed. He stated that the problem with ELWC was that Mr Doherty used to be the sole repairer for PAT scales for the whole of the country; so that every PAT scale had to go through him and parts would have to be bought from him.

By the end, according to Mr Jones, Mr Doherty’s performance was suffering and he just was not doing his job. He would put a certification sticker on the scales and write out a certificate but he would not have touched the scales. Mr Jones also asserted that ELWC was nine months behind supplying calibration certificates, which were needed for any court proceedings.

Evidence obtained by the Commission indicates that, on or around 9 June 2016, Mr Soliman advised Mr Doherty about the reported concerns about ELWC’s certification practices and solutions were proposed to address these and some other, more minor scale maintenance issues. One such solution involved Mr Soliman approving a PO on 9 June 2016 for the procurement through ELWC of four sets of 24 PAT SAW 10A portable weigh scales. This procurement (costing approximately \$6,575 per scale excluding GST) would give ELWC some spare assets to enable it to return full sets of six scales back to inspectors while ELWC was repairing the failed scales, so that the inspectors could still do their work during the down-time of equipment repair.

On 13 July 2016, Mr Malhotra wrote a letter of confirmation that ELWC remained IRD’s sole distributor in Australia for all IRD WIM and vehicle data collection products and systems. The letter was said to be valid for one year and could be renewed thereafter with the mutual agreement of IRD and ELWC.

Mr Soliman claimed that ELWC failed to procure genuine parts when they said they were purchasing them and continued to use non-genuine parts in scales even after being told by Mr Soliman that the scales would not be legally certified if this practice continued.



Mr Soliman also claimed that Mr Doherty was not genuine in trying to address the performance concerns that Mr Soliman raised with him. When it was pointed out to Mr Soliman that, on 19 August 2016, he had advised Mr Doherty that there no issues at that point with ELWC's maintenance of scales and there would be no change in terms of ELWC's provision of maintenance and certification services, Mr Soliman claimed:

*...they were operating fine for maybe one month maximum, that's the feedback I got from the field. And again, they continued to do the things which were illegal, basically.*

Despite the evidence to suggest that ELWC had undertaken the necessary changes to address the identified shortcomings in their performance of supply, maintenance and certification services to RMS, on 21 July 2016, Mr Soliman wrote an email to Mr Malhotra and IRD's president, asserting that nothing had changed. Mr Soliman noted that he had been in contact with Mr Malhotra over the past several months regarding "extremely poor support" from ELWC. He went on to claim:

*Im not going to go through all the numerous issues we currently have dealing with ELWC here, but quite simply, ELWC are UNABLE to manage their business and this has impacted our entire enforcement division, bringing our business to a stand-still several times.*

*I have provided several options to ELWC to support THEIR business to enable continuity of the RMS business; they have not taken up those options, and I am now reaching out to IRD directly.*

*RMS have some vendors in mind that are capable, resourced and responsive enough to meet RMS requirements for the RMS WIM and Portable Weigh Scale fleet. We are also about to start an asset replacement program to replace all ~550 portable weigh scales. The fact of the matter is, if RMS is not sufficiently supported for the IRD assets we have, we can not continue to procure IRD products.*

Mr Malhotra told the Commission that, after July 2016:

*...while RMS continued to work with ELWC to resolve the outstanding issues, based on the direct feedback received by RMS, it was clear that RMS would not be able to work with ELWC and as a last resort, ELWC offered to coordinate an exit plan with RMS ensuring support for RMS's business to continue without ELWC. RMS introduced Novation to IRD as a potential alternate vendor in August 2016.*

## Novation is introduced to IRD as an alternative vendor

On 14 August 2016, Mr Soliman sent an email to Mr Thammiah from his personal email address, with the subject line "IRD meeting". The body of the email contained the following:

*business prospectus: strategic technology and innovation company based in sydney. focusing in ITS.*

*\*procurement: ITS.*

*\*development: fabrication, ITS technology trials, engineering.*

*\*maintenance: local 24/7 hardware support across Australia and expanding to QLD + contracts with 3rd party fabricators and engineers.*

*\*legal certification: vehicle dimension scanner + ADR certification +under-vehicle cameras.*

Mr Soliman claimed this email was drafted by Mr Thammiah and sent by Mr Thammiah. He specifically remembered that it was Mr Thammiah who was typing "on the actual laptop", although he conceded Mr Thammiah might have been "pushing ideas" off him as he typed. Mr Soliman claimed that he saw the email for the first time as he gave evidence. He said he did not think it was all completely true, but disagreed there were any "outright lies" apart from the claim that Novation had provided Australian Design Rules(ADR) certification. He gave evidence that some of it was accurate and some of it was "embellished".

On 19 August 2016, Mr Thammiah sent Mr Malhotra an email attaching what he described as a "brief prospectus" for Novation and inviting Mr Malhotra to contact him with any further questions. The one-page document attached was on Novation letterhead. It falsely claimed that RMS's Compliance Operations Branch had been Novation's client from December 2012 to the present. It claimed that Novation had managed/delivered the following enforcement programs for RMS:

- *Enforcement-vehicle computers – scoping study and delivery*
- *Under-vehicle enforcement camera Program – Delivery, maintenance, calibration, legal certification*
- *Thermal Vehicle Scanner – Delivery, maintenance, calibration, legal certification*
- *Portable weigh scales – Scoping Study*
- *Vehicle Dimension Scanner – Delivery, maintenance, calibration, legal certification.*

The RMS contact given for these programs was Mr Soliman. These five “programs” correspond with five of the six field trials and scoping studies purportedly undertaken by Novation between November 2015 and June 2016 (discussed earlier in this report). None of those projects, except the under-vehicle cameras, involved the “delivery” of the technology or hardware that appeared to be claimed in the prospectus.

The prospectus claimed Novation’s “business skills and competences [sic]” to be, in descending order of importance, computer engineering, strategic technology and innovation design, electrical engineering, custom fabrication and telecommunication/network engineering. The prospectus claimed that Novation could perform design, engineering and fabrication of strategic intelligent transportation systems (ITS) technology and innovation, 24/7 ITS hardware maintenance, calibration and legal certification, ITS consultancy and ITS procurement. It claimed that Novation would be expanding its business into Queensland in 2017.

Nearly two years later, on 26 April 2018, Mr Soliman and Mr Thammiah were discussing on WhatsApp what Novation should do to become the local supplier for fibre optic WIM products sold by an award-winning Czech company, and how to get in first before any other competitor. Mr Soliman told Mr Thammiah:

*Send that 1 page resume i made for novation*

*We used it for rish ages ago ...*

*Just update it to show that we manage and maintain the nsw portable weigh scale mass management technology. (Emphasis added)*

The Commission is satisfied that “rish” is a reference to Mr Malhotra’s first name and that the “1 page response” is the “brief prospectus” Mr Thammiah sent to Mr Malhotra on 19 August 2016.

Mr Soliman denied preparing the prospectus document but said he thought he read it when Mr Thammiah prepared it at his house. He denied knowing it contained false and misleading information about Novation’s experience and capabilities, or that he supported Mr Thammiah to make such false and misleading representations to IRD.

Mr Thammiah gave evidence that Mr Soliman had “definitely helped” prepare Novation’s prospectus and provided the template for it. He conceded that parts of the prospectus were “wrong” or a “mistake”, but said he expected IRD to do their own due diligence before selecting a new partner.

Mr Thammiah claimed that the eight people he told Mr Malhotra were in the Novation team were the

contractors he worked with, including the cousin he put on his books, and the vendor of the thermal vehicle scanner, with whom he once had a discussion about other opportunities for projects after the trial discussed in chapter 3 of this report. He claimed that the use of the terms “managed/delivered” in connection with “programs” was “open to interpretation” and should instead have been connected with “trials”. As for the calibration and legal certification itemised in the prospectus, he said that this referred to the research he did about these matters for a particular study, rather than actual calibration or certification.

Mr Thammiah did not agree that the statements made in the prospectus were false statements, because he claimed to believe they were not *statements*. He did not agree that the prospectus was misleading or false, but said, rather, that “I definitely talked myself up”. Mr Thammiah denied that the prospectus was concocted in order to secure a sole vendor licence from IRD. He denied that he and Mr Soliman had concocted a plan, as at the middle of 2016, that Novation could take over from ELWC and secure lucrative work from RMS to supply PAT scale parts and ultimately PAT scales. Mr Thammiah also denied knowing that Mr Soliman was assisting him to obtain the sole vendor licence from IRD.

After receiving the “brief prospectus”, Mr Malhotra had some questions for Mr Thammiah. He wanted more detail about the five different “products/systems/technologies” Novation had provided to RMS and was interested, in particular:

*...in understanding more about your involvement with the portable weigh scales scoping study since that is of direct relevance to our discussion with RMS using the IRD portable axle weighers.*

He also wanted more details about the Novation “team”, including its size, competencies and capabilities and the background of the individuals who would be IRD’s direct point of contact for the portable scale business.

Mr Thammiah responded by email on 23 August 2016. He told Mr Malhotra that RMS engages “us” to perform scoping studies and field trials on new ITS technologies to prove concept for their enforcement applications. He clarified that Novation was not a supplier/distributor of any of the technologies listed in the prospectus, “except project 2 which is a custom designed and manufactured solution by Novation”. The “project 2” to which he was referring was the procurement of under-vehicle cameras (see chapter 3). Mr Thammiah further claimed in relation to this project that Novation “manage and maintain these national assets on behalf of RMS”.

Mr Thammiah also claimed that the Novation team was an “8 person extended team with various capabilities/

skill-sets as listed in the Novation prospectus sheet". He also claimed that it engaged a panel of contracted third party vendors such as electricians and fabricators "for reliable and efficient management of the above mentioned under vehicle camera assets".

Mr Malhotra told the Commission he understood that Novation was based in NSW and included a team of around eight individuals (mainly technical), primarily involved in prototyping and designing technology products for RMS and, at that time, he was advised that Novation had an ongoing business relationship with RMS, earning yearly revenue of approximately from AUS\$700,000 to AUS\$900,000. He understood that Mr Thammiah had a professional relationship with Mr Soliman as an RMS vendor. He satisfied himself that Novation would be a suitable distributor of IRD products in Australia through his:

*...assessment of the rapport and RMS's comfort in working with Novation in the face to face meeting between IRD, RMS and Novation in October 2016 and further, the endorsement of Stephen Thammiah (Novation) by Samer Soliman (RMS) as IRD's potential channel to RMS for the portable scale service and supply business.*

Following a telephone discussion involving Mr Soliman, Mr Thammiah and Mr Malhotra on 25 August 2016, Mr Malhotra sent Mr Thammiah a confidentiality non-disclosure agreement (NDA) to execute and return. The NDA noted that the parties wished to "discuss and evaluate the possibility of working together to pursue business opportunities in the Intelligent Transportation Systems (ITS) Industry".

On 30 August 2016, Mr Malhotra emailed Mr Thammiah and advised that, as per their discussion with Mr Soliman, he understood that:

*...the immediate focus is for Novation to be able to re-sell IRD's portable scales to RMS in Australia. We certainly need to plan for a detailed training session at our factory in Switzerland once we get into discussions on Novation servicing and maintaining our portable scales for RMS in Australia.*

Mr Soliman organised a teleconference meeting for 2 September 2016, involving himself, Mr Malhotra and Mr Thammiah. The actions to be discussed were as follows:

- 1) Sign NDA.
- 2) Once NDA signed, Rish to send portable weigh scale model brochures and wholesale costings.
- 3) Reseller 'certificate' to be created and signed for Novation to be a formal reseller of IRD parts.

## The multi-vendor approach

At the same time as Mr Soliman was facilitating the introduction of Novation to IRD as an alternative vendor, he was facilitating the removal of ELWC as the sole local vendor for IRD.

On 15 August 2016, Mr Soliman sent an email to Mr Doherty with the subject heading "Transport for NSW – Multi-Vendor Program Requirements". In his email he claimed that:

*...as with all our other enforcement programs such as red-light speed cameras which has 3 vendors supporting, we must operate on a multi-vendor environment where more than 1 vendor provide services for any single program [sic].*

*All enforcement programs will be slowly migrated to this model. First off, obviously is the heavy vehicle mass-management program (WIM's/scales) (original emphasis).*

On 19 August 2016, Mr Doherty sent an email to Mr Malhotra in which he stated that he had tried to contact Mr Soliman several times that day but had been unable to speak to him. He said that he saw only two ways forward; either ELWC and RMS worked together to resolve concerns and grievances, or both parties found a solution for an amicable separation. He asked for Mr Malhotra's assistance to provide the best outcome and expressed the need for Mr Soliman to provide him with a list of any potential issues so that he could put forward a business plan to address them.

The same day, Mr Doherty emailed Mr Soliman and let him know that he was aware that Mr Soliman had "discussed using another vendor for the scale maintenance with IRD yesterday and having them trained accordingly". He noted that, only the day before, Mr Soliman had confirmed that he was "happy with the service level being provided for current scale maintenance with a big improvement experienced over the past six months". Mr Doherty asked Mr Soliman to confirm what plans he had for this other company. Mr Soliman emailed back shortly afterwards, "No current changes in terms of portable weigh scale maintenance/certification. ELWC will continue to maintain scales".

On 8 September 2016, Mr Soliman invited Mr Doherty and Mr Malhotra to participate in a teleconference. He claimed that an agreement was needed for the "multi-vendor approach" for IRD portable weigh scales because it "has been dragged far too long". In his email, he set out his recommended option for such an approach in relation to IRD's portable weigh scales:

*Vendor A: procure (~50% of all new procurement), service entire fleet, calibrate entire fleet*

*Vendor B: procure (~50% of all new procurement).*

*As ELWC currently have a good performance with service and calibration, I am happy to commit to ELWC being assigned VENDOR A above (ie sole service and calibration vendor for portable scales) to ensure revenue stream for ELWC. RMS seeks to support all our vendors.*

He noted that, although the proposal was a change for ELWC, “it is a necessary change to ensure we are aligned with best government practise [sic]”. Mr Soliman sent a confirmatory email after the teleconference that the outcome had been that ELWC agreed “in principle” to become Vendor A.

In his evidence to the Commission, Mr Hayes said “the email doesn’t make any sense at all”. He noted that ELWC needed to change the service and calibration arrangements, to make them more efficient, whereas Mr Soliman’s email announced that there would be a new provider to sell the product, which did nothing to fix the problem. He observed:

*...so a particular manufacturer of a product now has two agencies to quote to us. So what’s going to happen? Is he going to undercut himself? It makes no sense whatsoever. This, this has no logic ... So there’s one product and we’re suggesting we will buy them from two agencies but a singular one of those agencies will provide the service for everything that’s purchased. Now, if I was that agent, I would be pretty annoyed about that because, well, why are you buying from them and then I have to service them. It makes no sense.*

Mr Hayes said he was not aware that Mr Soliman had been corresponding with an IRD representative and with ELWC along these lines. Mr Hayes told the Commission that the multi-vendor approach meant getting together a panel of suppliers of particular equipment, rather than selecting only one vendor, in order to keep prices competitive for RMS and get the best value for money for the organisation. Mr Hayes said that the multi-vendor approach would not apply to Mr Soliman’s proposal for IRD. What it should have meant was that, in the procurement of new scales, RMS would make sure that IRD was not the only company it looked at. It did *not* mean that RMS could mandate to an international company that it needed more than one distributor of its products in NSW.

On 3 October 2016, Mr Doherty expressed more than just annoyance with Mr Soliman’s plan. He sent Mr Soliman an email in which he advised that he had no alternative but to cease ELWC’s business relationship with RMS with immediate effect. He noted:

*Whilst we continued to support RMS, you are now insisting as part of the required “Multi-Vendor best government practices”, that at least two companies supply goods and not services? I, and others were of the opinion that “multi-vendor” requirements were for services only, as most – if not all equipment vendors are exclusive agencies, exactly like ELWC. RMS have directed IRD to comply with this request for any upcoming sales – only a maximum of 50% can be provided to ELWC. With all the unjustified complaints, it would seem that IRD are now being forced to comply with this request.*

On 3 October 2016, Novation’s quotes numbered “095”, “096”, “097” and “098” were drafted for field trials and scoping studies worth a total of over \$320,000. They were located by the Commission on Mr Soliman’s home computer. That day, Mr Soliman sent Novation’s quote 095 to Mr Thammiah in Word version, with the instruction “quote attached. convert to PDF and send”. Novation did not proceed with any of these four quotes. With ELWC ceasing its business relationship with RMS, a more lucrative line of work had now become available for Novation and it would no longer do any field trial or scoping study work for RMS.

On 10 November 2016, Mr Soliman’s good friend, Mr Hamidi, registered AZH as a company. Over the next 18 months, Mr Soliman awarded AZH field trial and scoping study contracts, including those four projects contained in Novation quotes 095, 096, 097 and 098, worth a total of over \$1.3 million. The arrangement between Mr Soliman and Mr Hamidi is examined later in this report.

## Who can do the maintenance?

With ELWC’s repudiation of the “multi-vendor” approach and its cessation of its business relationship with RMS, Mr Soliman had achieved the potential for Novation to take its place. But he also had a problem. Novation had absolutely no capacity to provide the maintenance and certification services previously provided by ELWC to support the IRD products used by RMS.

The evidence indicates that Mr Soliman came up with a temporary “solution” just in time for a meeting he arranged to coincide with Mr Malhotra’s visit to Sydney on 6 October 2016, at which he introduced Mr Malhotra to Mr Thammiah. On 5 October 2016, Mr Soliman sent an email to Mr Thammiah and a person called “Hamish” from Company B. He told them:

*Thank you both for taking up this challenge at such short notice!*

*I’ve attached some critical information here for you to read to familiarise yourselves (particularly hamish)*



*with the requirements for the maintenance/certification of portable weigh scales and to kickoff the process of handing over maintenance of PAT/IRD portable weigh scales to Novation/[Company B]. Please have a read of them so we can meet next week to discuss in detail.*

The same day, Mr Soliman asked Mr Malhotra to get in contact with Mr Doherty and obtain from him a spreadsheet of all the RMS portable weigh scales needing certification/verification. He followed up this request of Mr Malhotra on 10 October 2016, alleging that this information “is critical to enable novation to make a decision whether they can perform this work or not”. Mr Malhotra obtained a list from Mr Doherty and provided it to Mr Soliman on 19 October 2016.

On 17 October 2016, even before he or Mr Soliman had received information about the RMS scales needing maintenance and certification, Mr Thammiah sent Mr Soliman Novation’s quote numbered “099”, being a fixed price quote for \$104,760 per quarter for the maintenance and service of RMS’s current fleet of PAT scales on an annual cycle. There is no evidence that a PO was ever raised for this quote.

On 11 October 2016, Mr Soliman sent an email to Mark Mitchell at Accuweigh, a Victorian-based competitor to IRD in the portable weigh scale market and which supplied the Intercomp brand of scales. Mr Soliman asked whether Accuweigh would be interested in taking over the service/maintenance and the yearly certification/verification of the RMS current fleet of approximately 550 PAT scales.

On 19 October 2016, Mr Mitchell asked whether he would be “around the mark” if he offered to service each pad for \$395 (excluding GST). That price was said to include freight to Accuweigh’s office and back, test, calibration and a report, but not the spare parts necessary for repair, which would be quoted for separately.

On 26 October 2016, Mr Soliman responded in an email to Mr Mitchell asking him to issue a formal quotation for service/maintenance and verification/certification. He advised him “we will then proceed to formally accept this quote and Alex will open a PO for ~\$120K. this should last you ~6 months”. The same day, he emailed Mr Hayes and advised that he had “now secured a solution (AccuWeigh) for maintenance/certification of our portable weigh scale fleet”. There is no evidence that Mr Soliman advised IRD at this time that Accuweigh, IRD’s competitor, had been engaged to provide the maintenance and verification/certification services previously provided by ELWC.

With the maintenance and calibration side of the equation “fixed” for the next six months at least, that same day, on

26 October 2016, Mr Soliman sent himself a placeholder reminder to “call rish to ask for sole vendor licence for novation lyr in NSW to skip tender and speed up procurement”.

Mr Malhotra told the Commission that, subsequent to his face-to-face meeting with RMS and Novation in October 2016:

*RMS advised IRD that Novation was their preferred vendor, however IRD needs to make a business decision on who it would like to work with for the RMS scale business. This communication was over the phone between Samer Soliman and myself.*

## **Novation becomes sole distributor for IRD in NSW**

On 10 November and again on 15 November 2016, Mr Soliman emailed Mr Malhotra and Fernando Garza, product sales manager for international business at IRD, asking for a price list for scales and scale parts to be provided as soon as possible because of his urgent need for parts to maintain the older 10A series I and II model scales. He claimed that Novation had advised him “they” were still waiting on IRD for pricing as well. In his second email, he claimed that he had “dozens upon dozens of scales out of operation ... [and] approximately 50 inspectors sitting around doing nothing due to not having scales”.

On 15 November 2016, Mr Soliman emailed Mr Malhotra and asked him to provide an update regarding the “‘partner’ vendor licence for novation”, asking whether it had been issued to enable RMS to procure IRD goods. Mr Malhotra responded on 16 November 2016 that he anticipated that Mr Thammiah would receive the licence before the end of business the next day.

On 16 November 2016, Mr Malhotra wrote to Mr Doherty acknowledging and thanking him for the longstanding and mutually successful relationship between IRD and ELWC for the past several years. Mr Malhotra advised Mr Doherty that, as a consequence of RMS’s request and their subsequent discussions over the past four months, IRD would be establishing alternative business channels in NSW and that, from that point, their business agreement and distributorship would no longer be exclusive in nature in NSW. Significantly, Mr Malhotra noted that IRD continued to support ELWC in all Australian states and territories outside NSW for the sale, installation, service and maintenance of all IRD WIM and vehicle data collection products and systems.

On 17 November 2016, Mr Malhotra emailed Mr Soliman and advised that no licence certificate or agreement had yet been provided to Novation because IRD was waiting for Mr Soliman’s confirmation that all outstanding matters with ELWC had been handled to RMS’s satisfaction.



Mr Soliman responded that all outstanding matters with ELWC had been finalised and that it would be preferable to give Novation a licence that was valid to 30 June 2017 rather than just for 90 days.

Even though no licence certificate or agreement had yet been provided by IRD to Novation, on 16 November 2016, Mr Thammiah sent Novation’s quote numbered “100” to Mr Singh, copying Mr Soliman. He advised that it was Novation’s price list for the portable scales valid for that financial year (2016–17). On 21 November 2016, Mr Soliman asked Mr Singh to raise a PO for \$220,000 for “reactive maintenance” of portable weigh scales in favour of Novation, on the basis of Novation’s quote. Significantly, the items on Novation’s price list were all in relation to the new PAT/SAW series III models of scale supplied by IRD, none of which was yet in use by RMS. Novation’s price list had no relevance to the scales and parts required to maintain RMS’s ageing fleet of PAT/SAW series I and II scales.

On 22 November 2016, Mr Soliman emailed Mr Malhotra to advise that he had reviewed the draft letter of appointment for Novation sent to him the day previously and he noted that it would be preferable for Novation’s licence to expire at the end of the 2016–17 financial year:

*...as I expect funding for the whole assets replacement program to be provided around April. The approval process to commence the whole asset replacement program is lengthy in RMS, so I'd obviously prefer to do it once only which will last the entire financial year instead of March.*

On 23 November 2016, IRD formally appointed Novation as its exclusive distributor of SAW equipment and related accessories for NSW. The appointment expired on 30 June 2017, but could be renewed on mutual agreement. Mr Malhotra advised Mr Soliman that the appointment had been made on 24 November 2016.

### Mr Soliman’s role

During the public inquiry, when it was put to Mr Soliman that he had lined up Novation to get IRD’s business, he claimed:

*...well ‘lined up’ is a strong term. I gave their name last out of all the other, the recommendations that I, that I gave, yep. And obviously, you know, it was a good thing for Mr, Mr Thammiah, and yes, I was favouring him, but I mean, was it a kind of a plan at the beginning to do that? No, it wasn’t.*

Mr Soliman agreed that he introduced Novation to IRD but denied that he persuaded IRD to appoint Novation as its distributor. He denied misrepresenting Novation’s capabilities to IRD.

Mr Soliman denied that the pressure he placed on ELWC caused it to terminate its business relationship with RMS and denied that it was his plan to introduce Novation as supplier of 100% of IRD products, claiming, “that’s just what ended up happening”.

He agreed, however, that he received cash payments from Mr Thammiah throughout this period, but claimed this was as a loan. The financial arrangement between Mr Thammiah and Mr Soliman during the course of Novation’s contractual relationship with RMS is the subject of examination in chapter 10 of this report.

During the public inquiry, Mr Thammiah gave evidence that Mr Soliman told him that an opportunity had arisen to take on the IRD licence as its distributor because of the previous vendor’s “sudden departure”. He denied that he and Mr Soliman concocted a plan whereby Novation would take over from ELWC.

The Commission is satisfied that Mr Soliman used his position as manager of the HVP Unit to bring about the cessation of the longstanding business relationship between RMS and ELWC. In his representations to IRD, he deliberately exaggerated the problems caused for RMS’s business by ELWC’s performance, inconsistently informing ELWC on 19 August that there were no issues with its maintenance of the scales, while continuing his complaints to Mr Malhotra.

The Commission is satisfied that Mr Soliman did this to impress on IRD the need for it to find an alternative local vendor. Mr Soliman made representations to IRD that amounted to an implied threat that IRD products would not be considered for the imminent asset replacement of RMS’s approximately 550 portable weigh scales if IRD did not do something about its local support and consider an alternative local vendor. The Commission is satisfied that, by approximately August 2016, Mr Soliman and Mr Thammiah had together determined that Novation could be an alternate local vendor for IRD products.

The Commission rejects Mr Soliman’s evidence that he offered up Novation to IRD as a “last option”. The extensive contemporaneous documentation, set out in detail above, clearly evidences Mr Soliman’s introduction, endorsement and promotion of Novation to IRD from the time it was suggested that IRD needed to consider finding an alternate local vendor if it wanted to keep RMS’s business. The Commission is satisfied that Mr Soliman represented Novation as a preferred RMS vendor and did not disclose his close personal relationship with Mr Thammiah when endorsing Mr Thammiah and his company to IRD.

The Commission finds that Mr Soliman drafted entirely, or was significantly involved in drafting, the false and misleading Novation prospectus sent by Mr Thammiah to

Mr Malhotra in August 2016. The Commission finds that Mr Soliman endorsed false and misleading representations made by Mr Thammiyah to Mr Malhotra during a teleconference in September 2016, concerning the longevity, size of yearly revenue from, and importance of, Novation's business relationship with RMS, the size and capacity of Novation as a company, and the experience and suitability of Mr Thammiyah to partner with IRD and distribute its products.

The Commission is satisfied that Mr Thammiyah provided Novation's prospectus to Mr Malhotra on 19 August 2016, knowing that it contained false and misleading information about Novation's capabilities and experience, including how long it had been established, the programs it "delivered" for RMS, its business skills and competencies, the range of services it could provide and its planned expansion interstate.

The Commission is satisfied that Mr Thammiyah knew that Mr Soliman also endorsed these false and misleading representations about Novation. The Commission rejects Mr Thammiyah's evidence and the submissions made on his behalf, to the effect that his expectation that Mr Malhotra would ask questions about the prospectus made the various misrepresentations contained in that document somehow less significant. Indeed, when Mr Malhotra asked for further relevant information, he was told further untruths, including that Novation managed and maintained "national assets" on behalf of RMS, that Novation was an eight-person team and that Novation had an ongoing business relationship with RMS, earning yearly revenue of approximately from AUS\$700,000 to AUS\$900,000.

The Commission is satisfied that Mr Soliman deliberately minimised or hid from IRD Novation's lack of capacity to undertake the maintenance and certification services previously undertaken by ELWC. The Commission is satisfied that Mr Soliman himself arranged for another contractor to maintain and certify the scales and represented to IRD that Novation would be providing these services in partnership with that other company.

The decision by IRD that ELWC's distributorship of their products in NSW would no longer be exclusive in nature was substantially the result of Mr Soliman's false and misleading representations about ELWC's poor performance and the requirement for a "multi-vendor" approach. The Commission is satisfied that IRD was substantially influenced by Mr Soliman's false and misleading representations about Novation and its RMS preferred vendor status and capabilities in its determination that Novation was a suitable company to become the new local vendor for its products.

Between approximately August and November 2016, the primary focus of Mr Soliman's efforts was to facilitate

a distributorship arrangement between Novation and IRD so that Novation could immediately start selling IRD products in NSW. The Commission is satisfied that the primary focus of Mr Soliman's efforts was not, as he asserted, to ensure that spare parts were immediately available so that the failing scales could be repaired. The PO for \$220,000 for reactive maintenance that he signed in Novation's favour, even before Novation had been awarded the sole vendor licence by IRD, was based on a price list for newer models of scales and accessories than RMS was currently using.

The Commission is satisfied that Mr Soliman ensured that Mr Malhotra appointed Novation as its sole NSW distributor until 30 June 2017, rather than just for 60 days, because he believed that funding for the RMS asset replacement program for portable weigh scales would become available in April 2017 and he wanted Novation to be secured as the supplier of scales and parts to RMS as at that time.

The Commission is satisfied that, on 3 October 2016, the day that Mr Doherty ceased the business relationship between RMS and ELWC with immediate effect, Mr Thammiyah and Mr Soliman had jointly drafted four quotes worth a total of over \$300,000 for Novation to do further field trial and scoping study work for RMS. The Commission is satisfied that Novation did not ever go ahead and perform the work set out in these quotes because a far more lucrative opportunity had been created for the company by Mr Soliman when he exercised his official functions to secure the sole distributorship of IRD scales and spare parts in NSW for Novation.

## Corrupt conduct

Between April and November 2016, Mr Soliman misused his position as RMS HVP Unit manager to obtain for Novation the exclusive right to sell in NSW the existing brand of PAT/SAW portable weigh scales and parts used by RMS.

This conduct on the part of Mr Soliman was corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act. It involved the partial and dishonest exercise of Mr Soliman's functions as a public official in that:

- he dishonestly represented that a multi-vendor approach was mandated by government
- he dishonestly represented Novation as an RMS-preferred vendor over other potential scale suppliers in his discussions with IRD
- he dishonestly sought to influence IRD to grant an exclusive distributorship to Novation

- he dishonestly endorsed Mr Thammiah's false and misleading representations about Novation's capacity to become IRD's exclusive distributor
- his primary focus was not to get the best outcome for RMS, but to secure a lucrative opportunity for Novation.

For the purpose of s 9(1)(b) of the ICAC Act, this conduct could involve a disciplinary offence or reasonable grounds to dismiss Mr Soliman. It involves multiple breaches of the code of conduct, which required employees to act in a lawful, professional and reasonable manner and to act in the best interest of the agency, with fairness and impartiality and to maintain the confidentiality of corporate information.

The Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman had engaged in conduct that constitutes a disciplinary offence. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because the conduct took place over a significant period of time. Mr Soliman was motivated by favouring a close friend as well as greed and self-interest. As a manager, he held a position of trust within RMS and his conduct involved a significant breach of that trust. Given that Mr Soliman was a manager, his conduct could have impaired public confidence in public administration. Further, as stated, the conduct could involve a serious disciplinary offence.

## Section 74A(2) statements

The Commission is satisfied that Mr Soliman is an "affected" person for the purpose of s 74A(2) of the ICAC Act.

Mr Soliman's employment with RMS was terminated for serious misconduct with effect from 26 February 2019. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

## Chapter 5: AZH replaces Novation

After Novation was appointed IRD's sole distributor, Mr Soliman continued to award field trial and scoping studies but to AZH, the company of his friend, Mr Hamidi. Initially, the contracts were for similar amounts to the Novation contracts; being, 10 RMS contracts awarded between January and August 2017 for the total value of \$465,850. After its appointment to the RMS PSC panel, AZH was awarded four substantially more lucrative contracts. Mr Soliman's role in AZH's appointment to the PSC panel and awarding of these contracts is examined in chapter 7. The issue of any financial benefit obtained by Mr Soliman as a result of this conduct and the Commission's corrupt conduct findings are also examined in chapter 7.

### AZH becomes an RMS vendor

As outlined in the previous chapter, on 24 November 2016, two events occurred: Mr Malhotra advised Mr Soliman that Novation had been appointed IRD's exclusive distributor of SAW equipment and related accessories for NSW, and Mr Soliman emailed Mr Singh and asked him to add AZH to the RMS contract management databases as a new vendor. Mr Soliman did not disclose in the email that AZH was the company of their mutual friend, Mr Hamidi.

On 28 November 2016, Mr Singh sent an email to AZH and asked for supporting business documentation required to list the company as an RMS vendor. His email gave no indication that he already knew, much less had a close friendship with, Mr Hamidi.

Mr Hamidi told the Commission that he had registered AZH as a company on 10 November 2016, having set it up as an e-commerce business to sell soccer-related t-shirts and other apparel that he designed. He made his wife the director for tax reasons, as she worked part-time, and he was still working full-time at Optus at that point. The business operated from his house.

Mr Hamidi told the Commission that, in late 2016, he contacted Mr Soliman because he knew he was soon going to be made redundant from Optus, as eventually occurred in April 2018, and asked whether Mr Soliman knew anyone who might be hiring. Mr Soliman initially referred Mr Hamidi to a contact in the private sector, but that lead did not eventuate. Some time in late 2016, Mr Soliman visited Mr Hamidi's house and told him he could get him work through RMS. According to Mr Hamidi, Mr Soliman described this work as "basically just doing trials and doing documents and putting it together and making a recommendation".

According to Mr Hamidi, Mr Soliman told him the work he would give him would involve a couple of jobs worth \$20,000 or \$30,000 each. Mr Hamidi asked Mr Soliman how the arrangement would work financially for him and Mr Soliman told him that, at the start, because Mr Hamidi did not know what he was doing, Mr Soliman would take 75% of the earnings because he would be teaching him. Mr Soliman told him "I'll train you up and then once you're trained, it's all yours, but for now, while I show it, it will be 75 per cent me and 25 per cent you". Mr Soliman told Mr Hamidi that the payments to him would have to be made in cash. Mr Hamidi said he did not question the 75/25 per cent split in earnings because it was Mr Soliman who was "the one setting it all up".

Mr Hamidi said that he recalled asking Mr Soliman at the time whether what he was proposing was illegal. Mr Soliman told him it was not and that the worst that could happen would be that Mr Soliman lost his job.

Between January 2017 and August 2018, AZH submitted 18 quotes to RMS, and Mr Soliman requested that POs be raised for 14 of these quotes. RMS paid AZH a total of \$1,312,864 for the work quoted. The first five quotes for these contracts were submitted by Mr Hamidi in a matter of days, between 17 and 31 January 2017 alone. Thirteen of the 14 contracts awarded to AZH required the conduct of a trial. Mr Hamidi gave evidence that he only ever



attended the first three of these trials, in February, March and April 2017, respectively. He said that, after these first three trials, Mr Soliman told him he did not have to attend anymore, and Mr Hamidi never attended any other place in connection with the work for RMS for which AZH was paid.

Mr Hamidi also said that Mr Soliman in fact gave him no training, as promised, during the first field trial and the arrangement subsequently changed. Mr Soliman told him that it would just be easier if he did all the work and Mr Hamidi just submitted the quotes and invoices to RMS after Mr Soliman had sent them to him. Mr Hamidi gave evidence that this subsequent conversation occurred in early 2017 on WhatsApp. Mr Hamidi said that Mr Soliman never gave him any guidance about how to draft a scoping study report or how to prepare a quote or invoice.

In his evidence to the Commission, Mr Soliman denied that he did the AZH work himself and that he did not train Mr Hamidi. Mr Soliman claimed that his method of training “got out of control”. He said that, at first, he guided Mr Hamidi with the paperwork and told him what to do for the trials, what hardware to use, recommending the site, and recommending that he contact a particular manufacturer, and do the scoping study reports in a particular format. He said that as Mr Hamidi asked for “more and more things”, it got to the point where Mr Soliman worked on the actual quotes and invoices for him. He said he drew up the invoices using a template; copying and pasting from the quote. He said “one thing led to another, until I basically stopped in June I think, June 2018 because things got out of control”.

When it was put to Mr Soliman that things had got out of control because AZH was being paid for scoping study projects in which Mr Hamidi had done nothing at all, Mr Soliman said “Well, I, yeah, I don’t know what the real truth of it is now”. He claimed:

*I don’t know if he was doing anything at all or because I gave him a very long leash because of his family, he had a major family trauma for about 12 months and also he was in serious need of money, I kept on, I guess, making his leash, longer until the middle of 2018 where we both agreed, okay, I said I’m out, you know and he said he doesn’t really need my help anymore. It wasn’t a falling out as such but we just agreed that the next one will be the last one.*

Mr Soliman denied that AZH became his new vehicle for profiting from trials and scoping studies after Novation ceased doing them, stating “No, I wasn’t, he wasn’t paying me then”. Mr Soliman claimed that Mr Hamidi offered to pay him to continue “training” him around the middle of 2017. The financial arrangement between Mr Hamidi and Mr Soliman is discussed in chapter 6 of this report.

The Commission is satisfied that, in about November 2016, Mr Soliman instigated a plan to award contracts for field trial and scoping study work to his friend, Mr Hamidi.

The Commission is satisfied that both Mr Soliman and Mr Hamidi knew that Mr Hamidi lacked the requisite skills and experience to undertake such work. The Commission accepts Mr Hamidi’s evidence about the arrangement with Mr Soliman. Mr Hamidi gave evidence against his own interest. His account is credible and supported by other evidence referred to in chapter 6.

In reaching this conclusion, the Commission has had regard to the submission made on behalf of Mr Soliman that Mr Hamidi’s evidence was not necessarily against interest, in that he obtained at least one material advantage in having his wife excluded from the public inquiry and putting her beyond the reach of any findings against her by the Commission. It was contended that it was always in his interest to place all of the blame on Mr Soliman so that the internal processes of AZH would not become the subject of scrutiny and the respective roles of Mr Hamidi and his wife would not need to be considered. It was further submitted that Mr Hamidi was anything but a credible witness and therefore one would not accept his uncorroborated account.

The Commission rejects this submission. Despite repeated criticisms on behalf of Mr Soliman, that Ms Hamidi was not called to give evidence in the public inquiry, the submissions on his behalf do not identify any matter about which she may have given evidence relevant to, or able to assist, Mr Soliman’s interests. The Commission is satisfied that she could not have given evidence to assist it to determine whether Mr Soliman gave truthful evidence about the extent of his contribution to the reports purporting to be the work of AZH.

The Commission is satisfied that Mr Soliman concocted an arrangement, whereby he would do the work himself, under the guise of “training” Mr Hamidi and a 75/25 per cent split in earnings would reflect this arrangement. The Commission is satisfied that Mr Soliman provided no training to Mr Hamidi.

Mr Singh gave evidence that he was aware that his friend’s company, AZH, was awarded a number of RMS contracts. During the public inquiry, Mr Singh was taken to the evidence that AZH’s first five quotes were addressed to his attention. They were all forwarded to him by Mr Soliman in the very short period, between 18 and 31 January 2017, with the request that he raise a PO for each. Mr Singh gave evidence that he did not notice at the time that five different projects had been awarded to AZH in a fairly short period of time. He later agreed that he should have noticed this, but that it was more noticeable in hindsight than it was at the time, given that he “was working on



a whole bunch of things". Mr Singh agreed that he was involved in raising the POs for nine of the 14 contracts awarded to AZH. He denied that he intentionally kept himself unaware of what was going on in relation to AZH.

The terms and conditions of the first five quotes included the term that the customer would be invoiced after indicating acceptance of the quote and that payment would be due prior to delivery of service and goods. Mr Singh gave evidence that, when he received the invoice from Mr Hamidi for the first trial, he got in touch with him and told him he could not approve the invoice until he had AZH's report. Mr Hamidi asked Mr Singh to speak to Mr Soliman about it. Mr Singh raised the issue with Mr Soliman, who pointed out the payment terms that he had agreed to with AZH and told him the invoice was good to approve. Mr Singh gave evidence that this was the case for every subsequent trial for which he received an invoice from AZH.

## IMC thermal camera – RMS01

On 10 January 2017, Mr Hamidi received an email from Mr Soliman's personal email address with the subject line "AZH trials this financial year". The four trials listed in the body of the email were:

- 1) *IMC Thermal Trial at Picton Rd*
- 2) *SICK high-speed dimension scanner at Marulan HVSS*
- 3) *TIRTTL/Optris thermal sensor integration at Mt Ousley Rd southbound*
- 4) *TIRTTL/LTI dimension scanner integration at Marulan HVSS.*

These four trials correlate respectively with the trials for which Novation quotes numbered "098", "097", "096" and "095" were drafted on 3 October 2016, but which did not eventuate following the appointment of Novation as IRD's sole NSW distributor, as discussed in the previous chapter of this report.

Mr Hamidi gave evidence that he attended the first of the trials listed in the email as well as a trial at Twelve Mile Creek and one at Marulan.

## AZH quote RMS01

On 16 December 2016, Mr Soliman sent an email addressed to the "AZH team" and asked for a quote for the scoping study and trial of the Industrial Monitoring and Control Pty Ltd (IMC) thermal camera "with the requirements we discussed earlier". Mr Hamidi gave evidence that there was no discussion between himself and Mr Soliman about such requirements before he received this email.

At 1.20 pm on 17 January 2017, Mr Hamidi sent a quote to Mr Soliman for a scoping study and trial of the IMC thermal camera. The next day, Mr Soliman forwarded the quote to Mr Singh and asked him to submit the paperwork for the contract to be created.

AZH quote numbered "RMS01" set out a scope of works comprising a field trial and scoping study of the FLIR A615 brake and tyre compliance scanner and a report on the trial results. The quote itemised the "engineering/design and fabrication" of pavement mounting and tarmac-mounted housing for the scanner. The trial required the testing of the technology in a range of adverse weather conditions and low light. Its scope of works was identical to Novation's quote numbered "098", located on Mr Soliman's home computer and discussed in the previous chapter. AZH's total quoted price was \$31,900 and the payment terms required payment prior to delivery of service and goods.

Mr Hamidi gave evidence that neither he nor his wife had drafted quote RMS01; rather, it was a document that had been sent to him by Mr Soliman earlier that day. This is corroborated by evidence that indicates that, at 12.47 pm on 17 January 2017, just over half an hour before Mr Hamidi submitted it, Mr Soliman had sent Mr Hamidi quote RMS01 in PDF version, with no content in the cover email.

Mr Hamidi said that the process by which Mr Soliman sent him a quote and he sent it back "was pretty much how it happened for every single quote and invoice" thereafter. Mr Hamidi said that, most of the time, Mr Soliman sent him the AZH quotes in Word format and he would convert them to PDF and send them to RMS. He said that Mr Soliman's instructions were words to the effect "convert them to PDF so my name is not on them", by which he meant that the author or creator of the file of the Word document would be removed on conversion to PDF.

Mr Soliman claimed that he did not know whether he had drafted the quote. He said he thought he gave Mr Hamidi "the original empty quote template"; although he acknowledged that he would also have provided the scope of works part of the quote. He asserted that providing the scope of works for the AZH quotes was "another way of guiding him through some parts that need to be pre-done" but he claimed that he had not come up with the quote's price, saying the "prices are always him". Mr Soliman claimed that Mr Hamidi had asked him about the "ballpark" price he should charge, and he told Mr Hamidi that if he quoted over something around \$50,000, he would be unlikely to get the contract.

The RMS procurement thresholds for professional services contracts or non-construction expenditure

required three written quotes between \$30,001 and \$250,000 (including GST). For any contract awarded by Mr Soliman to AZH that was over the value of \$30,000 *including* GST, the procurement rules required Mr Soliman to engage in a competitive process and ensure that at least two other quotes were obtained before preferring AZH.

The Commission is satisfied that Mr Soliman drafted AZH quote RMS01.

On 21 March 2017, as instructed by Mr Soliman, Mr Hamidi emailed Mr Singh and asked for the PO numbers for the contracts then on foot with AZH. Mr Singh sent Mr Hamidi five POs for the five AZH quotes, including RMS01. The PO was the indication that the quote had been accepted and its importance was that it contained an order number for inclusion as a reference on any invoice. The total value was \$160,600 for the five POs raised by Mr Singh between 20 January and 7 February 2017.

### What did Mr Hamidi do?

Mr Hamidi gave evidence that the first trial he attended, the IMC thermal camera trial, took place at Picton Road on 2 and 3 February 2017. He said that, at this trial, both the thermal camera and the inspectors measured the temperatures of the vehicles' brakes and his role was to record the camera's data and the inspectors' results. Mr Soliman had told him to record the data that he received from the camera vendor and the RMS inspectors on a spreadsheet and this was a spreadsheet that Mr Hamidi sent through to Mr Soliman at a later stage. The Commission accepts that Mr Hamidi attended the trial on these dates.

Mr Hamidi said that, other than attending the trial for two days, he did none of the work itemised in the scope of works in quote RMS01.

On 7 February 2017, Mr Hamidi sent an invoice for \$31,900 to the Transport Shared Services (TSS) email address, copying Mr Singh.

### The report

On 15 March 2017, Mr Hamidi sent Mr Soliman an email advising that the scoping study for the IMC thermal camera had been completed and that, due to the file content and size, all of the documentation, including photos and video had been sent on a USB to Mr Soliman.

Mr Soliman claimed that he received the USB from Mr Hamidi containing the AZH report, photos and documentation, around the time Mr Hamidi emailed him to say the report was complete.

Mr Hamidi gave evidence that, while he did upload some photos he had taken at the trial to Google Drive and sent Mr Soliman a link to them, he never sent a USB to Mr Soliman containing a report, photos or video, but that he had been instructed by Mr Soliman to say that in an email. Mr Hamidi accepted that what he had written in the email was false. He said he was told by Mr Soliman that he would do the study in the meantime and upload it to the RMS server. The Commission accepts Mr Hamidi's evidence on these points. They are admissions against interest and he had no evident reason to lie.

On 18 May 2017, an email was sent to Mr Soliman under the name of Mr Hamidi's wife, attaching what it described as "an email friendly sized version of the scoping study that was mailed to you on the 15/03/2017". Mr Hamidi gave evidence that he sent the email and that his wife had no access to the AZH business email address. He said that Mr Soliman told him it would be better if the email was seen to come from his wife rather than him because she was the director of the company.

It was Mr Hamidi's evidence that he did not prepare the report that was attached to the email sent on 18 May 2017 and that it had been sent to him previously by Mr Soliman.

Mr Hamidi agreed that, when he submitted the invoice to RMS, he did so in order that payment would be made. He said that he knew he had only been involved in a very small way in the trial, but said that essentially, "it wasn't me getting paid, it was Mr Soliman getting paid".

Tim Snell, IMC managing director, provided a statement to the Commission dated 31 May 2019. This occurred during the course of the public inquiry. Mr Snell had become aware that a report purporting to be the work of AZH, which had been tendered in the public inquiry and was accessible on the Commission's public website, was actually an IMC report for RMS, re-branded with the AZH logo. Mr Snell was also concerned that some of the information contained in the publicly accessible "AZH report" was the proprietary information of IMC and relevant to a then-current patent application lodged by the company.

Mr Snell told the Commission that he organised a trial of the FLIR thermal camera to be conducted on 2 and 3 February 2017 at the Picton Road site. On 2 February 2017, Mr Singh and Mr Soliman were present together with "an independent consultant from AZH", whose name he could not recall. Mr Soliman introduced Mr Snell to the consultant and told him he was there to verify IMC's results. On 3 March 2017, Mr Snell invoiced RMS for \$6,116, this amount being for all of the work carried out for the trial, including the drafting of a trial summary report.

Mr Snell stated that, on 23 February 2017, he sent IMC's report summarising the results of the thermal camera trial to Mr Singh and Mr Soliman, copying the AZH consultant. Mr Snell was asked by the Commission to compare IMC's report of 23 February 2017 with AZH's report dated 15 March 2017. He said that they were almost identical documents and that it appeared that AZH had just substituted the company's logo and made minor adjustments to the text. He told the Commission that the photos, data and conclusions were all identical.

A comparison of the two reports confirms Mr Snell's evidence and indicates that the AZH report is identical to the IMC report sent by Mr Snell to Mr Soliman, Mr Singh, Mr Hamidi and others on 23 February 2017, in all but the most minor formatting respects, including a different cover page, a slightly less detailed contents page and the addition of AZH footers and logo.

Mr Soliman denied that he produced the AZH report following the trial, but said he definitely "touched" the first two reports that Mr Hamidi produced, because Mr Hamidi's "formatting was very much off", in the sense that he had his logo too small and did not have footers. In terms of the substance of those reports, however, he claimed that all that he saw were "quick drafts", which Mr Hamidi skimmed through when showing him.

When it was pointed out to him that AZH's report was identical to IMC's, Mr Soliman claimed that he had provided Mr Hamidi with a copy of the IMC report on a USB. Mr Soliman was asked whether it was possible that he had been the person who took the IMC details off the report and applied the AZH logo. He responded that he was not sure and did not remember doing that, saying, "It would be a little bit weird if I did that because I mean he would be doing that, he should have been doing that".

Mr Soliman claimed that it must have been Mr Hamidi who substituted AZH's for IMC's logo, because the report already had the AZH logo on it when he reviewed the report. He did, however, concede that he had made some minor formatting changes to the report, including to the size of the logo.

When it was put to Mr Soliman that he knew Mr Hamidi could not have prepared a report with the level of technical content the AZH report contained, Mr Soliman responded:

*Well, when I looked at the actual technical content I know that part couldn't have come from him because that could have only come from the manufacturer really, but there's lots of stuff in there that is reasonable to believe that Ali worked with him and he was onsite with them for all of, all of it and he was taking a record, even when I was there, I was only there for a short time, he was taking a record of*

*the temperatures and taking notes and speaking to them and Jai also said he was doing well and he was turning up and just didn't have any reason at the time not to believe him.*

The effect of Mr Soliman's evidence was that there was no particular issue with the fact that the contents of the IMC and AZH reports were identical and, indeed, that it was almost to be expected, because Mr Soliman knew that Mr Hamidi had worked "in collaboration" with the vendor to obtain the data. The Commission finds Mr Soliman's evidence on these matters completely lacking in credibility. The Commission finds that Mr Soliman frequently tailored his evidence during the public inquiry to provide the most self-serving response to the documents that were shown to him. In this case, his evidence involved the inconsistent and absurd assertions that the trial was a collaborative effort between the vendor and Mr Hamidi *and* that Mr Hamidi's involvement had ensured an absence of bias and data cleansing, which justified RMS's payment of \$30,000 to AZH for a report identical to the one from the vendor, but costing five-times what was paid to the vendor for the total trial.

The Commission accepts Mr Hamidi's evidence, that Mr Soliman prepared the AZH report. The Commission is satisfied that, in doing so, Mr Soliman essentially copied the IMC report but substituted the AZH logo for the IMC logo and made some minor formatting changes.

During his evidence at the public inquiry, Mr Singh agreed that he had received the report summarising the results of the trial from IMC on 23 February 2017 because he was the RMS contact for that trial, but said he did not receive a report from AZH. He said it was his understanding that Mr Soliman was receiving the reports from AZH for future trials but he was not sure why he did not receive AZH's report for this first trial, given that he had attended and was the RMS point of contact.

## The AZH invoice

Mr Soliman was asked whether he had produced the AZH invoice for this contract. He responded "don't know, I'm not sure for this one". He claimed that he recalled sending Mr Hamidi a blank template of an invoice, and that one thing led to another and Mr Hamidi ultimately asked him to create the invoices for him using the scope of works from the quotes.

Mr Soliman initially claimed that the approval of the invoice for the project was a matter for Mr Singh as the manager of the project, but ultimately agreed that, as Mr Singh's manager, he had oversight. When asked if he was happy for the invoice for this project to be paid, Mr Soliman said:

*I wasn't not happy, but for the first, you know, half I wasn't getting paid so I, for me the purpose of it was to help a friend out that was in need. There was no money involved for me. There was no benefit at the beginning. But things got out of control.*

As discussed above, Mr Singh agreed that, after consulting with Mr Soliman, he had authorised the payment of AZH's invoice, received on 7 February 2017 for \$31,900. He agreed that, on 23 February 2017, he then received the invoice from IMC for \$6,116. He disagreed that he knew, therefore, that AZH was getting a significant sum of money for doing barely anything. He said he understood that AZH was going to provide a report on the trial's outcome but he did not know at the time what the market rate was for reports. He claimed to see now that it was a significant sum, but not to have known any better at the time.

## SICK FPS dimension scanner – RMS02

On 18 January 2017, the day after the first AZH quote was submitted, Mr Hamidi submitted quote RMS02 to Mr Soliman, who forwarded it to Mr Singh and asked him to raise a PO. This quote, actually dated 20 January 2017, in the amount of \$31,900, contained, word-for-word, exactly the same scope of works as Novation's quote numbered "097", discussed in chapter 4. It involved a field trial and scoping study of the SICK high-speed freeflow profiling system (FPS) for the purposes of enforcing heavy vehicle over-dimension regulation, engineering/design and fabrication of items, including mounting brackets for the scanners, mechanical installation of sensors and placement of cables, provision of an appropriate gantry or pole, power supply and network connection, and a report on the trial results. Payment was required prior to delivery of goods and services.

Mr Hamidi gave evidence that neither he nor his wife prepared quote numbered "RMS02" for this trial but, rather, that Mr Soliman sent him the quote via email and, on 18 January 2017, he (Mr Hamidi) sent the email submitting it to Mr Soliman at his RMS email address. The Commission accepts this evidence.

Mr Soliman agreed that he had prepared the scope of works for AZH's quote RMS02.

On 7 April 2017, Mr Singh sent a placeholder for the SICK FPS trial at Twelve Mile Creek HVSS, scheduled to take place between 8 and 10 May 2017. The recipients included Mr Soliman, SICK representative Mr Down, and the AZH email address. On 8 May 2017, Mr Soliman advised some of his RMS colleagues that he and Mr Singh would be "kicking off the SICK dimension sensor trial"

at Twelve Mile Creek that day and for the following two days.

On 27 April 2017, before the trial had taken place, Mr Hamidi sent an invoice for this contract to TSS, copying Mr Singh and blind-carbon-copying Mr Soliman. On 15 May 2017, AZH was paid \$31,900.

## The work

During the public inquiry, Mr Hamidi admitted that he did no fabrication or bracket-mounting, did not provide a gantry or pole or prepare a scoping study in relation to this trial, as itemised in quote RMS02. He said he had no experience with a high-speed dimension scanner and did not know what one was until he asked the vendor at the trial. Mr Hamidi said that his role at this trial was the same as at the previous one, and involved him checking the technology's measurements against the inspectors' manual measurements. He said the equipment, which was already installed, generated the data that was given to him.

Mr Hamidi said that he attended the trial at Twelve Mile Creek and collected the data, together with the vendor and Mr Singh; all of them working together off the one spreadsheet. Mr Hamidi said that Mr Soliman was not present and that it was Mr Singh who was managing the vendor, dealing with the inspectors and coordinating the trial.

The Commission is satisfied that Mr Hamidi did none of the work for which AZH quoted and was paid by RMS. The Commission is satisfied that, as with the first trial, Mr Hamidi's involvement, limited as it was, was incompatible with the independence required of AZH.

## The report

On 12 May 2017, Mr Down sent a number of documents to Mr Singh, Mr Soliman and other SICK and RMS employees, but not Mr Hamidi. Mr Down advised in his email that he had put together a report based on the testing that was carried out at Twelve Mile Creek and had also provided the "raw data so your 3rd party can assess the trial".

On 1 June 2017, a PDF version of a report purporting to be AZH's scoping study report on the SICK FPS, dated 1 May 2017, was sent from the AZH email address to Mr Soliman, under Ms Hamidi's name. The cover email described it as an "email friendly" version of the study. Given that the trial did not commence until 8 May 2017, the purported AZH report could not have been drafted on 1 May 2017.

A comparison of the SICK report provided to Mr Soliman by Mr Down on 12 May 2017 and AZH's report indicates



that the two documents are almost identical. The AZH report contains exactly the same contents page, data, general observations, graphs, images and conclusions as the SICK report. The minor differences between the reports include different cover pages, the addition of AZH footers and logo and very minor rewording of the last sentence of the introduction in the AZH report.

Mr Hamidi gave evidence that he did not prepare the AZH report. He said Mr Soliman provided the report to him.

During the public inquiry, Mr Soliman was asked whether, given that he had emailed the AZH corporate logo to himself on 23 May 2017, he had been the one to convert SICK's report to an AZH report. Mr Soliman responded:

*I don't recall doing it, but again, this would have been the same thing as previously. I'm pretty sure I done similar formatting changes for him here. I'm not sure what other reason I would send myself the logo. I didn't even realise I did that.*

He said that Mr Hamidi told him that he was taking down the data from the technology and the manual measurements of the vehicles and therefore he assumed Mr Hamidi had contributed to the contents of SICK's report. He said he was told that the report was a joint collaboration between SICK and AZH.

The Commission finds that the AZH report, dated 1 May 2017, sent by Hamidi to Mr Soliman on 1 June 2017, was prepared by Mr Soliman. The Commission finds that he sent himself AZH's corporate logo on 23 May 2017 so that he could replace the SICK logo from the vendor's report with the AZH logo and pass the vendor's report off as the work of AZH. Given that the trial did not commence until 8 May 2017, the purported AZH report could not have been drafted on 1 May 2017, as the document indicated. The document was also identical in all material respects to the SICK report sent by the vendor to Mr Soliman, but not to Mr Hamidi, on 12 May 2017.

## The TIRTL trials – RMS03, RMS04, RMS05

On 31 January 2017, Mr Hamidi submitted to Mr Soliman AZH quotes numbered "RMS03" (\$33,000), "RMS04" (\$33,000) and RMS05 (\$30,800). They were respectively dated 21, 22 and 23 January 2017. The work quoted for involved field trials and scoping studies for TIRTL (infra-red traffic logger) and Optris thermal scanner integration, a TIRTL/LTI dimension scanner and TIRTL and WIM integration, respectively.

Mr Soliman authorised the creation of POs for all three quotes on the same day. Documents that were signed by

Mr Soliman and sent by Mr Singh to TSS for the purposes of creating the POs for these three contracts, note a contract commencement and completion date for these contracts as follows:

- TIRTL and Optris, from 1 February to 3 April 2017
- TIRTL and LTI, from 1 February to 18 April 2017
- TIRTL and WIM, from 1 February to 18 April 2017.

Mr Hamidi sent invoices to TSS, copying Mr Singh and blind-carbon-copying Mr Soliman, for each of these contracts, as follows:

- invoice for \$33,000, dated 27 March 2017, but sent by email on 9 March 2017 (TIRTL and LTI)
- invoice for \$33,000, dated 27 March 2017 sent by email on 29 March 2017 (TIRTL and Optris)
- invoice for \$30,800, dated 3 April 2017 sent by email on 3 April 2017 (TIRTL and WIM).

On 12 and 25 April 2017, RMS paid AZH in accordance with these invoices.

On 26 April 2017, the day after Mr Hamidi had received payment for the fifth AZH contract, Mr Soliman sent an email to Mr Hamidi with a summary of the status of the five trials for which AZH had by then been paid. For the second project, Mr Soliman noted that the trial had not yet commenced. For the three trials involving TIRTL technology, Mr Soliman provided a summary of trial results for the first two, and noted "scoping study not completed yet" for the third. This email corroborates Mr Hamidi's evidence that he would frequently ask Mr Soliman whether the AZH work, for which invoices had been submitted, had been completed and that Mr Soliman would reassure him that he had done the work or was working on it.

On 18 October 2018, the Commission executed a search warrant at Mr Soliman's house. The same day, documents and items, including USBs, were recovered from Mr Soliman's RMS workstation and provided to the Commission. One of these documents was an invoice for the TIRTL and Optris trial, identical to the invoice submitted by Mr Hamidi on 27 March 2017, except for its date, which was 13 March 2017, rather than the date on the invoice submitted by Mr Hamidi.

No evidence was located at, or by, RMS of the submission by email or other means of any scoping study report from AZH for the three TIRTL trials for which it was paid. Relevant reports were located on a USB provided to the Commission by Mr Hamidi (how Mr Hamidi came to be in possession of this USB is the subject of examination in chapter 7 of this report).



Mr Hamidi told the Commission that the third and last trial he ever attended, at Marulan, was one involving only himself and Mr Singh and no vendor was present. He said they were testing a TIRTL dimension scanner that had already been installed to compare the technology's measurements to the manual measurements they took of the heavy vehicles that were pulled over by the inspectors. Mr Hamidi said he sent the spreadsheet of data obtained to Mr Soliman.

Mr Soliman agreed that he provided the scope of work for the quotes submitted by Mr Hamidi for the three TIRTL trials. He claimed that the point of these trials was to collect data from technology that had already been "implemented", but for which no data had been obtained, to see whether the technology was "worthwhile". He said that he did not know whether Mr Hamidi attended the trials or not, but assumed he did because he gave him the project plans for the trial and the site locations. Mr Soliman admitted that it was "likely" that he drafted the invoice for one of the trials that was located at his RMS workstation, and that he sent it to Mr Hamidi who submitted it to TSS on or around 29 March 2017. This trial was for the TIRTL and Optris thermal scanner integration.

Mr Soliman agreed that he did not receive a scoping study report from Mr Hamidi following this purported trial. He claimed, "this is the period where he was going through serious personal issues with his wife and I cut him way too much slack".

Mr Soliman had difficulty accepting the proposition that he approved the invoice despite receiving no scoping study report from AZH. He claimed not to approve invoices, even though he agreed that he approved POs. He agreed that he did not at any stage seek to cancel the invoice or PO, saying:

*I saw basic drafts and he had everything he needed, and I felt I guess sympathy on him because of his personal issues, and I think he knew that he had quite some time to, to finish it, so he was waiting for his personal issues to finish for him to finalise all of his drafts, I guess ... in my mind there was no reason why it wasn't going to get done or wasn't getting done, in the process of getting done. That's what I was always assuming and told and saw.*

Mr Soliman claimed he did not push Mr Hamidi because he knew he had until 2020 to produce the reports. He asserted:

*... basically we had to draft or meet a state plan, Roads and Maritime Services plan, by 2020 and one of those things was to recommend new technology by 2020. Yeah, and I told him that and I guess he knew he had time.*

Mr Soliman claimed that he needed the reports preferably by the end of 2019 so that he could make the recommendations in the HVP Unit's business plan, which was part of the RMS state plan for 2020 and he claimed that telling Mr Hamidi this "was probably the thing that has caused a lot of this. If I didn't say that then I'm sure his urgency would have been different".

Mr Soliman repeatedly denied that this evidence was false. He persisted with the assertion that he saw drafts of reports from Mr Hamidi, that Mr Hamidi had project plans and everything he needed to complete the reports, and that he did not want to push Mr Hamidi because of his personal issues. Mr Soliman agreed that no report had been submitted to RMS for these trials by at least October 2018, when the search warrant was executed on his home and he was suspended from RMS. He claimed he knew that Mr Hamidi had not finished the reports when the invoices for the contracts were paid, but claimed he had no reason at that time to doubt that the work would be done. He conceded, however, that no other contractor had been engaged to do work and paid without any work being provided, on the expectation that the work could be provided two-to-three years later.

There is no evidence that any report of any of the three TIRTL trials was ever submitted to RMS by AZH. There is evidence, however, discussed in chapter 7, that scoping study reports for these trials were drafted after the Commission executed a search warrant on Mr Soliman's home and he realised that it would be discovered that AZH had been paid for work it had not done. Chapter 7 examines Mr Soliman's conduct in relation to the "missing" AZH work and his attempt to create evidence to mislead the Commission's investigation.

The Commission is satisfied that Mr Soliman drafted the three AZH quotes, all at or under \$30,000 excluding GST, and instructed Mr Hamidi to submit them on 31 January 2017. On this day, Mr Soliman accepted them and authorised POs raised in AZH's favour for the total amount of \$96,800. Mr Soliman drafted the three invoices against the POs he had requested and instructed Mr Hamidi, despite AZH having done none of the work for which it had quoted, to submit them for payment on various dates between 9 March and 3 April 2017.

Mr Soliman and Mr Hamidi deceived Mr Singh about the extent of Mr Soliman's involvement in any work for which AZH was receiving payment. The first five AZH quotes, albeit all submitted in January 2017, were staggered by date. They were all \$30,000 and under (excluding GST) to avoid suspicion. Mr Soliman was blind-carbon-copied into emails from Mr Hamidi to Mr Singh when submitting AZH invoices, and Mr Soliman instructed Mr Hamidi not to tell Mr Singh that Mr Soliman was preparing the AZH reports.

The Commission rejects Mr Soliman's evidence, repeated in the submission made on his behalf, that he did not push Mr Hamidi to produce the AZH reports following the trials because Mr Hamidi effectively had until 2020 to complete them, and that he gave Mr Hamidi "too much slack" because of a family trauma Mr Hamidi and his wife were experiencing at the time. The Commission considers this evidence and submission preposterous.

The Commission is satisfied that technology trials, such as the ones undertaken by Novation and discussed in chapter 3 of this report, are, of their nature, quickly redundant due to the rapidly evolving nature of technology. The purpose of these trials and studies was to independently verify technology vendors' claims and support a funding submission should the technology prove useful. Mr Soliman's assertion that RMS could wait for almost three years to receive such reports from AZH, and that the recommendations about new technology would still have utility in 2020, is rejected. The Commission's rejection of the assertion is strengthened by the evidence that the duration of each of the contracts for these three trials was specifically stated on the POs signed by Mr Soliman to be approximately three months.

The Commission finds Mr Soliman's evidence of why he did not cancel POs or invoices in favour of AZH when he did not receive the reports from AZH to be a particularly egregious example of the consistently false evidence that Mr Soliman gave to the Commission throughout the inquiry.

## The next five contracts awarded to AZH

After the first five contracts awarded by Mr Soliman to AZH in January 2017, the scheme between Mr Soliman and Mr Hamidi began to follow a predictable pattern. It is convenient to discuss the next five contracts awarded to AZH as a group rather than individually because, apart from some insignificant differences, they each involved essentially the same course of conduct on the part of Mr Soliman and Mr Hamidi. For none of these five contracts was any work done by AZH let alone any work to justify the payment of over \$300,000 to the company in the few months between 5 June and 9 October 2017.

Quotes for the next five contracts awarded to AZH by Mr Soliman were drafted as follows:

- 15 March 2017 – a fixed price quote of \$33,000 for generic technology/hardware trials and scoping studies (RMS06)
- 26 April 2017 – Houston Radar vehicle scanning technology/hardware trial and scoping study for \$33,000 (RMS09)

- 26 April 2017 – a two-phase report on heavy vehicle crash analysis and trends in NSW for \$66,000 (RMS10)
- 5 July 2017 – HAENNI portable scales end-to-end field trial for \$53,625 (RMS11)
- 10 August 2017 – PAT 10C III dynamic portable scales end-to-end field trial for \$53,625 (RMS12).

Mr Hamidi gave evidence that the same procedure was followed in creating every quote and invoice submitted by AZH; namely, that Mr Soliman would send those documents to him with instructions, usually given via WhatsApp, about when Mr Hamidi was to submit them to RMS. Mr Soliman also admitted that the arrangement between himself and Mr Hamidi got to the point where:

[Mr Soliman]: *I was even working on the actual quotes for him. So rather than writing on a piece of paper, that would basically be the scope of the work which he needed to do to finish the job and the, and the invoices, he said he wasn't getting the purchase order numbers so eventually it turned out that I, I used one of his templates I think for the invoice, put [it] in there and sent that to him.*

[Commissioner]: *So you drew up the invoices for him?*

[Mr Soliman]: *Off a template, I think, yeah, yeah. They were just a copy/paste really from the quote. So again, one thing led to another, until I basically stopped in June I think, June 2018, because things got out of control.*

The Commission is satisfied that Mr Soliman drafted the quotes and invoices submitted by Mr Hamidi and instructed him when to submit them as well as what to say in emails addressed to himself, Mr Singh and others to suggest that AZH had completed or was completing the work.

It was Mr Soliman's evidence that he did not see finalised reports from AZH. The Commission finds that he approved the payment of significant sums of money to AZH for work he knew had not been done.

## Enforcement hardware R & D trials – RMS06

Theepan Thevathasan worked in the HVP Unit, reporting to Mr Soliman. He told the Commission that, on or around 15 March 2017, Mr Soliman asked him verbally to raise a PO request and emailed to Mr Thevathasan quote numbered "RMS06" and contract information.

On 19 May 2017, Mr Hamidi sent an email to Mr Soliman, purportedly from his wife, advising him that the scoping study for thermal and cold camera brake and tyre screening technology had been completed and that all of the documentation, including photos and videos, had been sent to him on a USB due to the file content and size.

Mr Soliman claimed not to recall getting a USB from Mr Hamidi containing the report for this trial and said he just saw a draft.

AZH submitted an invoice, dated 18 May 2017, in the amount of \$99,000. It purported to be for field trials at RMS selected sites, analysis and a scoping study for “thermal” and “cold” cameras. Mr Thevathasan attached this AZH invoice to his email to Mr Soliman and Mr Singh on 24 May 2017. He asked them both whether the work had been done to a satisfactory standard and whether the funds could be released. Mr Thevathasan gave evidence that he included Mr Singh in this email because he knew that Mr Singh was heavily involved in a lot of “R & D style” trials and was onsite for most of them. It was Mr Soliman who replied to Mr Thevathasan, saying, “yes all good. Received this one (hard copy is sitting on my desk for your reading pleasure) and all the others. OK to approve all of them”.

Mr Thevathasan told the Commission that goods needed to be certified as received before payment but the job of checking the invoice against the scope of works in the quote was that of the person who engaged the contractor – in this case, Mr Soliman – and that is who he relied on.

Mr Soliman gave evidence that, when Mr Thevathasan asked him whether the work had been done, he got mixed up and thought Mr Thevathasan had been asking about the very first project undertaken by AZH, which had also been a thermal camera trial. Mr Soliman claimed that he had been talking with Mr Thevathasan because he sat across the desk from him, and therefore had not opened the AZH invoice attached to Mr Thevathasan’s email. He claimed that, because he had the initial thermal camera trial report right in front of him as they spoke, he told Mr Thevathasan it was “good to go”. Even though Mr Soliman claimed to have been talking in person to Mr Thevathasan about this matter, the Commission notes that he responded to him in an email with the claim that not just one report had been received, but “all the others” too.

### Houston Radar technology trial – RMS09

On 26 April 2017, Mr Soliman emailed AZH, referring to a meeting the week before and requesting a quote for the requirements specified for the trial and scoping study of Houston Radar technology at Galston Gorge. Mr Singh was copied into this email and into the email from AZH

attaching a quote for \$33,000 for this trial. Mr Soliman asked Mr Singh to raise the PO request.

Mr Soliman gave evidence that he and Mr Hamidi “must have met” about the trial; although he did not think he ever met Mr Hamidi at RMS and he was not sure whether he met him at his house. He claimed that, if their meeting was during business hours, it would have been somewhere in Parramatta or at a café close to his house. He claimed that the email in which he set out the specific requirements for the trial was unusual because he would ordinarily provide project plans for Mr Hamidi on a piece of paper at Mr Hamidi’s house.

Mr Soliman claimed there was a trial at Galston Gorge, that he provided Mr Hamidi with the scope of works for it, and that there was no doubt in his mind then that Mr Hamidi was planning to do the work. He could not recall, however, what he told Mr Hamidi to do for the trial, who he told him to contact from the vendor’s company or from RMS, how to connect the software to the hardware, or whether he needed to attend at a physical location. When it was put to Mr Soliman that it “beggared belief” that he would be spending public money to engage a third party that obviously did not have a clue what it was doing, given all the things he claimed he had to tell Mr Hamidi how to do, Mr Soliman asserted:

*I see what you’re saying, but what was needed here was someone who’s been doing data, data analytics for a long time and I guess that’s why he asked me to train him in the ITS side because he didn’t know that part.*

Mr Soliman conceded that at the beginning, “obviously I was favouring him”, and that Mr Hamidi “had a leg up because he was my friend”.

On 18 May 2017, Mr Soliman sent Mr Hamidi an email attaching an invoice for this project in PDF format. The cover email was blank. Mr Soliman admitted to the Commission that he had sent Mr Hamidi AZH’s invoice and said he did so because it had become a “habit” by now for him to prepare the AZH invoices.

On 19 May 2017, Mr Hamidi sent an email to Mr Soliman, purportedly from his wife, advising him that the Houston Radar scoping study had been completed and that all of the documentation, including photos and videos had been sent to him on a USB due the file content and size. This email was sent two minutes after the almost identical email to Mr Soliman, discussed above, advising that the scoping study for thermal and cold camera brake and tyre screening technology (RMS06) had been completed and sent separately on a USB.

## Crash analysis report – RMS10

On 26 April 2017, the same day that Mr Soliman purported to seek a quote from Mr Hamidi for the Houston Radar technology trial (RMS09), he separately requested a quote from him for a report to be delivered in two phases on heavy vehicle safety and crash analysis and trends, in the total amount of \$66,000. Mr Hamidi submitted a quote for this two-phase report the following day, copying in Mr Thevathasan.

Mr Soliman asked Mr Thevathasan to raise a PO and the necessary contract paperwork in time for their meeting later that day. Mr Thevathasan responded to Mr Soliman that he had looked at the old PO creation form and had seen that it was for \$99,000. Given that the previous engagement of AZH was for only \$33,000, he advised there was still money available for the new quote of \$66,000 under that PO.

During his evidence, Mr Thevathasan explained that the PO amount created a cap and that invoices could be submitted under the PO until the cap was reached, or the funds were expended, as long as the invoices still related to the scope of works for which the PO was originally raised. Mr Thevathasan said that it would be wrong according to the procurement rules to approve invoices as long as they fell within the PO cap without also checking to see whether the work delivered fell within the scope of works. He acknowledged, however, that within the HVP Unit there was a concept of what he called “blanket purchase order (PO)”, described as follows:

*...when the works are trivial in terms of size and the amount is small, rather than raising a new PO and issuing a new contract every other week, there has been the practice of issuing a capped amount for the financial year or something along those lines, and you would approve specific works during that period. Even in that case the person who's approving those things is still expected to certify the works that were delivered is what they had requested in the piecemeal manner.*

Examples of this practice are examined in chapter 8, which discusses the way in which at this time, between January and May 2017, Mr Soliman and Mr Thammiah were manipulating a number of blanket purchase orders worth a total of over \$1 million, raised for portable weigh scale spare parts and maintenance, by submitting multiple invoices, often in the one day, for amounts around \$30,000.

On 18 May 2017, AZH submitted an invoice of that date for \$66,000 to TSS, blind-carbon-copying Mr Soliman. Mr Hamidi's email provided a PO reference to TSS. This referred to a different PO than the one for \$99,000, which Mr Thevathasan had brought to Mr Soliman's attention as potentially having enough funds left to

expend to cover the quote for \$66,000. In line with Mr Thevathasan's own evidence, a quote for a report on crash analysis may be considered not within the scope of a PO raised for “operational enforcement hardware R & D/trials” and it is a reasonable inference that Mr Thevathasan was asked to raise a new PO request.

Just as for the previous two contracts, on 19 May 2017, Mr Hamidi sent an email to Mr Soliman, purportedly from his wife, advising him that the crash analysis report had been completed and all the documentation, photos and videos had been sent to him on a USB due to the file content and size.

Mr Soliman claimed that Mr Hamidi did not need to have any experience with heavy vehicles to provide the sort of road crash analysis, including an examination of the causes of fatal heavy vehicle accidents, for which AZH had quoted. Mr Soliman claimed to have expected a reliable and authoritative report on the subject from Mr Hamidi because it would be based on data and he was a data analyst.

Mr Soliman disagreed with the proposition put to him that it did not matter whether Mr Hamidi could or could not do the work because he was going to be paid for doing nothing. Nevertheless, he gave evidence that he did not recall getting a finished version of Mr Hamidi's report. Mr Soliman claimed to have seen something of the drafts for this project “when he would kind of briefly skim through some of the projects”, when Mr Soliman was with him at Mr Hamidi's house or at a café.

On 5 June 2017, RMS paid AZH \$198,000 for the three invoices that Mr Hamidi had submitted individually on 18 May 2017, blind-carbon-copying Mr Soliman.

During the public inquiry, Mr Hamidi gave evidence that he never met with Mr Soliman to discuss, much less attended, a trial of Houston Radar technology at Galston Gorge. He gave evidence that he never sent Mr Soliman a USB containing documentation, photos or videos from a thermal and cold camera trial, a Houston Radar technology trial or a heavy vehicle safety crash analysis. He said these were all reports that Mr Soliman told him he had completed and uploaded to the RMS system. He said that he was instructed by Mr Soliman on WhatsApp to send the emails on 19 May 2017, advising that the reports had been sent by USB “to close off the work”. He agreed that this was to create the pretence that AZH had done the work and submitted it to RMS. The Commission accepts this evidence.

No evidence was located at, or by, RMS of the submission by USB or other means of any scoping study report from AZH in relation to the thermal and cold camera or Houston Radar trials or any report on heavy vehicle crash analysis for which it was paid. Such reports, along with



others, were, however, located on a USB provided to the Commission by Mr Hamidi (how Mr Hamidi came to be in possession of this USB is the subject of examination in chapter 7 of this report).

Mr Hamidi agreed that his role was in a sense “administrative”, in that he would be sent a quote or an invoice, he would convert the document to PDF and submit it and he would then get an instruction via WhatsApp to send an email to advise that the project was complete but the report was too big to email and had been sent on a USB. Money would then be paid into the AZH account. He agreed that for these projects, he had not even attended a site and that from the very first trial onwards, he knew he was not going to get trained in any of it. Mr Hamidi also agreed with the proposition put by Counsel Assisting that his role in this arrangement with Mr Soliman was actually more than administrative because he was “essentially defrauding” RMS.

### HAENNI portable scale trial – RMS11

In the new financial year, on 6 July 2017, Mr Soliman sent an email to Mr Singh and Mr Thevathasan, saying:

*...a couple PO's need to be opened. I've told jai which ones and which WBS (work breakdown structure) bucket to use ... and he will create them tomorrow and you'll need to be approver as ill be on leave. Pls make sure they are submitted asap guys. Im trying to match our financial forecasting.*

Records obtained by the Commission indicate that Mr Soliman took two days of flex leave from Friday, 7 July 2017, and was back at work the following Tuesday.

One of the POs Mr Soliman wanted urgently submitted was for a further AZH contract. On 5 July 2017, Mr Singh had sent an email to AZH requesting a quote for “future RMS field trials”. Mr Hamidi submitted an AZH quote to Mr Singh, copied to Mr Soliman, for a HAENNI dynamic portable scales trial for \$53,625.

Mr Singh told the Commission that Mr Soliman asked him to issue the RFQ just to AZH. He agreed that the quote was for more than \$50,000 including GST, but he said that Mr Soliman told him the RFQ only needed to be issued to more than one company if the project was worth more than \$50,000 *excluding* GST.

The RMS Procurement Manual applicable at the relevant time provided certain procurement thresholds relevant to the contracts awarded to AZH. Contrary to what Mr Singh said he was told by Mr Soliman, the thresholds were *inclusive* of GST. Relevantly, for construction-related expenditure up to \$50,000 (including GST), one written quote was required, but for expenditure between \$50,001 and \$250,000 (including GST), three written

quotes were required. More significantly, however, the contracts awarded to AZH as a professional services contractor (PSC) involved *non-construction* expenditure. The procurement thresholds for PSC or non-construction expenditure required three written quotes between \$30,001 and \$250,000 (including GST). Effectively, therefore, for every one of the contracts awarded by Mr Soliman to AZH, he should have first engaged in a competitive process and ensured that at least two other quotes were obtained before preferring AZH.

The project set out in the scope of works in AZH's quote of 5 July 2017 involved the end-to-end management of a trial of the HAENNI brand of portable scales, including liaison with the technology vendor and conduct of the trial for up to three months. As discussed previously in this report, Novation had purported to provide a scoping study report on three brands of portable weigh scale in 2016, and had already concluded that the HAENNI model was the preferred and recommended scale for RMS's requirements.

Mr Hamidi gave evidence that all he did on receiving the RFQ from Mr Singh was wait for Mr Soliman to send through AZH's quote and then submit it. There was no discussion about the price AZH would quote and Mr Hamidi said he knew nothing about portable scales or the HAENNI brand.

On 24 July 2017, an email from AZH to Mr Soliman, but not copied to Mr Singh, confirmed that a field trial location had been secured and that the trial would be commencing that week. It also attached an invoice for \$53,625, dated 17 July 2017, which was paid by RMS on 9 August 2017.

Mr Hamidi said he was instructed by Mr Soliman via WhatsApp to send the email of 24 July 2017. He said he did not secure a location for a field trial or attend any trial for HAENNI dynamic portable scale technology. He said that Mr Soliman also drafted the invoice attached to the email and instructed him to send it. The Commission accepts this evidence.

Mr Singh gave evidence that, around this time, Ballina Shire Council was running its own mass enforcement operations using HAENNI dynamic weigh scales, and Mr Soliman sent Mr Singh to Ballina to observe this equipment in use. When Mr Singh returned to the office and gave Mr Soliman positive feedback about the dynamic scales, Mr Soliman engaged AZH to go up to Ballina for a trial. Mr Singh asked Mr Soliman what days AZH would be in Ballina so that he could align the dates and attend as RMS's contact. Mr Soliman told him he did not need to go because AZH would be managing the trial.

Mr Singh said that, some time later, when he was talking to the HAENNI manufacturer and discussing his own visit to Ballina, he mentioned that another consultant



should have been up there after him to manage a trial of the equipment and to capture data for RMS. The HAENNI manufacturer told him he knew nothing about this trial, which Mr Singh thought was odd. He raised this with Mr Soliman the next time he saw him, and Mr Soliman told him AZH would actually be going up to Ballina the following week.

During the public inquiry, Mr Soliman was asked about the HAENNI trial. Mr Soliman claimed to remember that a site was picked for the trial but not to know what happened after that. He told the Commission that there were two trials of HAENNI scales; one of which was cancelled.

The evidence indicates that, on 6 November 2017, Mr Singh sent an RFQ to AZH for a scoping study report for HAENNI dynamic portable weigh scales. That day, AZH submitted its quote numbered "RMS013" for this work to Mr Singh in the amount of \$50,875. A second quote for this work, dated 14 November 2017, also appears to have been submitted in the lesser amount of \$47,525, for which Mr Soliman asked Mr Singh to raise a PO request on 16 November 2017. An invoice for that amount was submitted by AZH on 29 November 2017. There is no evidence, however, that AZH was paid against this invoice by RMS.

### **PAT/SAW 10C III portable scale trial – RMS12**

In August 2017, the same pattern ensued in relation to another portable weigh scale trial awarded to AZH. On 8 August 2017, Mr Singh requested a quote from AZH for the end-to-end management of a trial of PAT dynamic portable scales. On 11 August 2017, Mr Soliman asked Mr Singh to raise a PO for the AZH quote for the trial in the amount of \$53,625. He told Mr Singh that certain of the inspectors "want this trialled ASAP". Mr Singh raised a PO request, which was signed by Mr Soliman, as the person with delegated approval, on 14 August 2017. The PO was created on 21 August 2017.

The following day, an email from AZH to Mr Soliman and Mr Singh advised that a site for the field trial had been secured and that the trial would immediately commence. The day after that, AZH submitted an invoice for the trial to TSS, blind-carbon-copying Mr Soliman. AZH was paid on 9 October 2017. Since the beginning of 2017 to this date, RMS had paid AZH a total of \$465,850 for 10 contracts awarded to it.

Mr Hamidi gave evidence that he had no knowledge of a PAT dynamic portable scale trial taking place. He said he was directed to send the email about the site location and commencement of the trial by Mr Soliman, but he had no knowledge of when or where any such a trial might occur, or whether it did. The Commission accepts this evidence.

Mr Soliman gave evidence that he knew nothing about this trial. He said he would have given Mr Hamidi some basic pointers, as he had done in relation to the previous HAENNI trial, but he did not know whether he attended the trial, where it took place, or even if it *did* take place. He repeated his evidence that a trial should have taken place, but that he no longer knew what Mr Hamidi did or did not do. While he admitted favouring Mr Hamidi, he insisted that Mr Hamidi was meant to do the work. Mr Soliman repeated his evidence that he did not push Mr Hamidi until mid-2018 because of Mr Hamidi's "family trauma".

Just as with the previous HAENNI portable weigh scale trial, the evidence indicates that, on 6 November 2017, Mr Singh sent an RFQ to AZH for a scoping study report for PAT 10C III dynamic portable weigh scales. A quote numbered "RMS14" for this work in the amount of \$49,390, dated 10 November 2017, was recovered from Mr Soliman's RMS workstation. Another version of this quote, dated 6 December 2017, was submitted on that date by AZH to Mr Singh. There is no evidence that any PO was raised or that AZH ever submitted an invoice in relation to this quote.

Mr Soliman could provide no explanation as to why the two trials were quoted for again in November 2017, in circumstances where AZH had already quoted and invoiced RMS, and been paid, for a HAENNI dynamic and a PAT 10C III trial in July and August 2017. He said that he thought the earlier contracts were cancelled. When it was pointed out that the earlier contracts had been *paid* for, Mr Soliman speculated that the later quotes must have been in relation to different hardware. He said that it did not make sense. He said that he recalled telling Mr Singh "to cancel a couple of these. I don't recall the reason exactly ... something changed".

The evidence establishes that the two quotes submitted by AZH on 6 November and 6 December 2017, for a HAENNI and a PAT portable scale scoping study respectively, did not proceed. These quotes had been submitted in response to two separate RFQs issued to AZH by Mr Singh on 6 November 2017. As Mr Soliman said in evidence, something had changed. The same day that Mr Singh sent out the RFQs for this work, Mr Hamidi and Ms Hamidi signed a deed of agreement with RMS following AZH's successful tender to be appointed to the PSC panel. This appointment enabled it to be awarded far more lucrative contracts than the contracts it had been awarded to that date. The two quotes for under \$50,000 could be abandoned or, as Mr Soliman said, cancelled, because much bigger ones were on their way. AZH's appointment to the PSC panel is examined in the next chapter.

## What did Mr Singh know?

Mr Hamidi gave evidence that, when he submitted AZH quotes to Mr Singh that had in fact been drafted by Mr Soliman, he did not ever think about his conduct as involving the deception of his close friend, Mr Singh. Mr Hamidi said that he did not believe that Mr Singh had any idea about what he and Mr Soliman were doing.

Mr Hamidi said that he never had a discussion with Mr Singh, where he told him that he had not drafted the first two or three scoping studies. He did not believe that Mr Singh knew that Mr Soliman was providing Mr Hamidi the AZH quotes. He said he did not recall having a discussion with Mr Singh about a possible conflict of interest in Mr Hamidi doing work for RMS and that, even though he was playing soccer socially with Mr Singh at this point every couple of weeks, they never spoke about work. Mr Hamidi only ever recalled one conversation in early 2017, when he saw Mr Singh at the gym and when Mr Singh asked him how everything was going with the work, Mr Hamidi merely replied “yeah, good”.

Mr Singh agreed that he received emails, apparently from his friend's wife, attaching quotes that said they had been prepared by her and suggesting that she and Mr Soliman had had discussions about trial requirements, but he said that he thought she was sending these emails on behalf of her husband. He agreed that he had attended trials where Mr Hamidi did not do much at all and he had to explain how everything worked, but he disagreed that he had ever thought this might be a scam between Mr Soliman and the Hamidis. He said “they were friends and I never expected them to do anything like that so, yeah, I trusted this was all legitimate”.

The Commission is satisfied that, given Mr Singh had no delegation of his own to approve quotes, he was not in a position to favour Mr Hamidi in relation to the contracts awarded to AZH, and he was working to the instructions of his manager, Mr Soliman.

However, the Commission finds that there were a number of alarm bells that should have rung for Mr Singh, including the number and regularity of quotes for which he was asked to open POs, the nature of the work given to AZH (given his understanding of his friend's lack of experience with ITS technology and heavy vehicles), Mr Hamidi's lack of independence in his involvement in the technology trials he did attend, and the fact that Mr Singh did not see reports from AZH until many months after the work claimed for had allegedly been performed. The Commission is satisfied, however, that Mr Soliman and Mr Hamidi actively deceived Mr Singh into believing that AZH was doing the work for which it had quoted and was paid.

## Chapter 6: AZH is appointed to the PSC panel

In November 2017, AZH was appointed to the RMS PSC panel and was awarded by Mr Soliman four substantially more lucrative contracts worth a total of \$850,000.

### The PSC panel

On 11 October 2017, RMS issued a RFT on the public e-tender website. The purpose of the RFT was to seek tenders from PSCs for inclusion on a panel that RMS could use if it needed contractors to carry out independent trials and provide detailed reports on selected technologies and their potential implementation.

Previously, on 4 September 2017, Mr Soliman emailed himself some notes from his personal email address to include in an email to his manager, Mr Hayes, and Roger Weeks, director of the recently restructured Compliance Branch. Mr Soliman's notes to himself outlined a number of justifications he saw for the implementation of two new panel contracts to carry out the majority of the work performed by the HVP Unit, including infrastructure and ITS maintenance, and research and development of ITS and software solutions. Mr Soliman's notes indicate his argument that the panels would ensure RMS received:

- 1) the best competitive pricing;*
- 2) converting reactive work into proactively managed programs with measurable outcomes such as our innovation/cost savings program...*
- I expect cost efficiencies by: 1) increasing competitiveness in these niche market industries;*
- 2) reducing reactive work (which is generally higher cost than proactive work of the same nature due to economies of scale).*

These arguments must have been persuasive, as two new panels were implemented in the months that followed; namely, the PSC panel to which AZH was appointed (discussed below) and the Heavy Vehicle Maintenance

(HVM) panel, to which Novation was appointed (discussed later in this report). Ironically, while Mr Soliman promised cost efficiencies and competitive pricing from the establishment of these two panels, the opposite was achieved by the appointment of his friends' companies to these panels.

The Commission is satisfied that it was Mr Soliman's idea to implement the PSC panel.

### Setting the tender criteria

The evidence indicates that Nathan Chehoud, a civil engineer from an external consultancy firm, WSP Australia Pty Ltd ("WSP"), was engaged to assist RMS to establish both panels. This included drafting the procurement documents for the PSC panel in accordance with requirements given to him by Mr Soliman and incorporating any suggestions made by Mr Soliman following review. The RMS records obtained by the Commission indicate that, from early September 2017, with some sense of urgency, Mr Soliman closely managed Mr Chehoud's preparation of the relevant documentation.

The records obtained by the Commission from WSP indicate that, on 6 September 2017, Mr Soliman met with Mr Chehoud to discuss the PSC panel. Mr Chehoud's notes of that meeting record that the work envisaged for contractors on the panel involved the research and development of software and hardware and that the companies that "currently do this work" were SGS and AZH. The main reasons for the panel were noted to be cost-savings and savings in contract management.

On 19 September 2017, Mr Soliman provided Mr Chehoud with some significant details about his requirements for the tender evaluation criteria and their weighting. Mr Soliman advised Mr Chehoud that the *quality* of past performance, rather than the time or cost, was all that mattered and that this criterion should be given an 80% weighting. The only other applicable criteria

were to be technical skills and methodology at a weighting of 10% each. Mr Soliman recommended the removal of the suggested criteria of the tendering organisation's management systems and skills, capability and financial capability. He asked that at least two examples of past performance be required, to demonstrate quality and methodology. He stated that the examples of past performance submitted would need to explain:

*...how the tenderer went from idea/concept from the government resource they were dealing with to a fully-fledged ITS trial being run independently and then to a detailed scoping study, and how much assistance they needed from the government resource.*

Mr Singh gave evidence that he reviewed the tender documentation and raised concerns with Mr Soliman about the demonstrated experience criterion, specifically the requirement that tenderers needed to provide a list of heavy vehicle trials conducted during the previous two years and attach at least two detailed reports resulting from those trials. He said that this requirement made it difficult for a vendor who had never previously worked with RMS, who may not have approval, for confidentiality reasons, to provide reports they had done for another company or agency. He said that Mr Soliman's response was that, if the tenderer could not provide the reports, there was no way they could demonstrate past experience. Mr Singh remembered saying that he was aware of only two companies at that point who had done that type of work, namely, SGS and AZH, and that could mean that only those two might be appointed to the panel. Mr Singh said that Mr Soliman said something to the effect "if that's the case, then that's the case".

Mr Soliman denied that the weightings and criteria were intended to favour AZH's inclusion on the panel. He also denied that the criteria left out – namely, management systems and skills, and the organisation's capability and financial capability – were matters for which AZH had no real capacity. Clearly, however, AZH did not have such systems or skills.

In an email of 19 September 2017, Mr Chehoud advised Mr Soliman that, if the value of the work orders under the panel was likely to exceed \$50,000 per order, then a panel of at least three officers would need to be established to assess the tenders, otherwise a panel of two officers would do. Mr Soliman responded that "work orders are highly unlikely to exceed \$50k".

On 25 September 2017, following up the status of the PSC panel documentation, Mr Soliman told Mr Chehoud that he needed the panel up and running before the end of October, and that "there are several pieces of work that are critically waiting for this panel to be established so we can commence works before the end of October".

Following a further review of tender documentation in early October, Mr Soliman advised Mr Chehoud that he had removed the requirements for tenderers to provide pricing or a pricing schedule as part of the tender response, noting:

*...this is a non-price tender and FIXED pricing/lump sum pricing will be requested from tenderer(s) for each specific work order/project.*

Again, he stressed to Mr Chehoud the need to finalise the documentation as soon as possible, claiming "we have some deliverable projects that have been requested to be delivered very soon". During his evidence at the public inquiry, Mr Soliman was unable to identify those urgent deliverable projects to which he had been referring.

The Commission is satisfied that, from early September 2017, Mr Soliman had substantive input into the preparation of the tender documentation. He set the tender criteria with an emphasis on demonstrated past experience in order to favour AZH, knowing at this time that he had awarded AZH 10 RMS contracts.

As noted above, the RFT was uploaded to the e-tender website on 11 October 2017. It closed on 27 October 2017 and the tender evaluation was scheduled to take place on 30 and 31 October 2017.

## Forming the tender evaluation committee

Mr Soliman had originally intended the tender evaluation committee (TEC) to consist of Mr Singh, Mr Thevathasan and Mr Chehoud. Before the tender documentation for the PSC panel was even finalised, however, Mr Chehoud had to withdraw from the process due to a conflict of interest. He had become aware that his own employer, WSP, had indicated an interest in tendering for inclusion on the PSC panel and he and Mr Soliman agreed that, in the circumstances, he could not be involved in the evaluation process.

Mr Singh gave evidence that, following the upload of the RFT to the e-tender website on 11 October 2017, he received a call about the RFT from a camera vendor interested in applying to be on the panel. In order to avoid the possibility that technology vendors would be able to trial the equipment of their competitors and have access to their intellectual property, a decision was taken to issue a clarification to the RFT's conflict of interest declaration requirement. That requirement provided that:

*...you must notify us of any potential or actual conflict of interest or duty in the Tender that may affect your ability to provide the proposed services to us. If we request, you will meet with us and discuss in good faith our concerns regarding any such conflict*



*of interest or duty. In any event, you must ensure that you act impartially in preparing your Tender and without regard [sic] to any conflict of interest.*

Mr Chehoud provided some advice and an example of the sort of wording RMS could use to make the necessary clarification. On 16 October 2017, Mr Singh advised Mr Chehoud in an email copying Mr Soliman that they had drafted an amendment to make it clear that RMS would not accept submissions from ITS manufacturers, suppliers, distributors or subsidiary companies due to conflict of interest risks associated with the scope of works for the tender. The clarification was incorporated into a tender addendum letter and uploaded to the e-tender website on Mr Soliman's instructions.

Although Mr Soliman was aware that Mr Chehoud had a disqualifying conflict of interest once his employer, WSP, indicated that it would be submitting a tender, and agreed that Mr Chehoud could no longer be on the TEC, he took no such measures for himself or Mr Singh. Of course, Mr Soliman knew very well that AZH, the company of Mr Singh's very good friend, would be submitting a tender, but he nevertheless appointed Mr Singh as the TEC convenor. When this issue was drawn to his attention during the public inquiry, Mr Soliman said "obviously now it's black and white" there was a conflict of interest, but at the time he did not really think about it.

Mr Singh gave evidence that he did not think he had a conflict of interest being involved in the tender evaluation when his friend had applied for inclusion on the PSC panel, "because I didn't have any interest in the success of AZH, so at the time I didn't think of it". Mr Singh said that it was not until he did probity and ethics training that he understood conflicts of interest better and only now understood that there was a perceived conflict of interest that should have been declared.

The potential for conflicts of interest was a matter that both Mr Soliman and Mr Singh were aware of prior to the tender evaluation for the PSC panel.

The Commission does not accept the evidence of Mr Soliman that his relationship with Mr Hamidi was not an issue in his mind because he was not on the TEC. Mr Soliman's conduct was at all times directed towards favouring AZH and ensuring it was successful. The Commission is satisfied that part of favouring Mr Hamidi included Mr Soliman's appointment of Mr Hamidi's good friend, Mr Singh, as the convenor of the TEC. Mr Soliman well knew that AZH was the company of his and Mr Singh's good friend Mr Hamidi and that they should both have declared a conflict in relation to their friendship with him.

The Commission does not accept that Mr Singh only learnt later, after probity and ethics training, that he had

a conflict of interest by being the convenor of the TEC evaluating his friend's submission. He knew the reason Mr Chehoud had had to withdraw from that position and he had drafted the addendum to the conflict of interest declaration requirements in the RFT.

The Commission is satisfied that, when Mr Singh declared that he had no conflict of interest to declare, he knew that he had a close friendship with one of the eight tenderers that could influence his decision-making and cause him to consider AZH's submission more favourably. The Commission is further strengthened in this finding by the evidence (discussed in chapter 8) that Mr Singh had been involved in the HVM panel tender evaluation just prior to his involvement in the PSC panel tender process and had therefore recently turned his mind to conflict of interest matters in that context.

## **AZH's tender submission**

The AZH tender submission was lodged under cover of letter dated 25 October 2017; it contained a number of false statements.

The submission falsely claimed that AZH had been operating in the ITS industry in Australia for two financial years and, during that time, had provided seven field trials and scoping studies for RMS. The submission stated that, as requested, two examples of scoping studies had been provided, which would demonstrate the company's ability "to be able to hit the ground running". The two reports provided by AZH with its submission were the reports produced following the first two trials awarded to AZH, concerning the FLIR thermal camera and the SICK FPS. As established in chapter 5, these reports, bar the AZH logo and some minor formatting changes, were plagiarised in all material respects from reports provided to Mr Soliman by other contractors.

The AZH tender submission claimed that Mr Hamidi, as the company's "technical lead", drew on a 10-year career in the technology industry, including the ITS industry. It claimed that he was a road transport legislation and ITS technology industry "subject matter expert" and had been involved in "ITS consulting for road government agencies throughout the world", which had enabled AZH to become an "industry leader" in ITS consultation.

The submission provided a list of seven heavy vehicle field trials and scoping studies undertaken by AZH in the previous two years, claiming that all of these had been completed on time, had met budget and that all of the scoping study reports for these projects had been accepted by the client. These projects consisted of the FLIR thermal camera, the SICK high-speed dimension scanner and the TITRL/LTI dimension scanner trials, being the only trials that Mr Hamidi ever attended, and

the TIRTL/Optris, Houston Radar, HAENNI and PAT dynamic portable scale trials that he did not.

On 18 October 2018, the day the Commission executed a search warrant at Mr Soliman's home, certain items were secured at his RMS workstation and later provided to the Commission. One of these items was a USB containing two versions of a draft AZH tender submission. Highlighted areas to be completed were the qualifications and competence of Mr Hamidi and Ms Hamidi. The rest of these drafts contained the detailed information about AZH and its purported experience and capabilities outlined above.

Mr Hamidi gave evidence that, in October 2017, Mr Soliman told him that it would be easier for AZH to get work and that the work would increase in value if AZH was appointed to a panel of professional services contractors. Mr Hamidi said that Mr Soliman told him they were now going to tender for work and this would be their new method of obtaining contracts from RMS. Mr Hamidi agreed that his expectation was that the procedure that was in place would continue, whereby Mr Soliman would do the work and he would merely submit the quotes and invoices.

Mr Hamidi said that he physically submitted AZH's tender submission, but did not prepare it. He said that he gave Mr Soliman some input about his and his wife's professional backgrounds, which Mr Soliman typed on Mr Hamidi's laptop at a charcoal chicken shop near Mr Hamidi's house. Mr Hamidi printed the document out, placed it in an envelope and posted it in the tender box at the RMS Parramatta office. Mr Hamidi said he did not really read the submission, other than the part about his and his wife's background and qualifications. He said he trusted Mr Soliman with it, saying "I didn't think he would get me into this kind of trouble".

Mr Hamidi agreed that the submission's claim that he had a 10-year career in the ITS industry was not true and admitted that he did not know what ITS was. He agreed that the claims about having detailed knowledge of worldwide best practices in the ITS industry drawn from international ITS consulting, and AZH being an ITS industry leader were "all false".

Mr Soliman denied preparing the AZH tender for the PSC panel. He conceded, however, helping Mr Hamidi with a part of his tender submission, although he could not recall which part, and said that he had possibly sent him a blank template as well, but he said "I definitely didn't do all of it, I don't recall doing that". Mr Soliman agreed that a draft of the AZH tender submission had been found on a USB located at his RMS workstation and that AZH's version of the SICK report was also found on that USB. However, when it was suggested that he had prepared

the AZH tender submission for the PSC panel, including the proposal that Mr Hamidi include the SICK report as part of the tender, Mr Soliman said "that's not what I recall I helped him with".

Mr Soliman was an unreliable witness and the Commission does not accept his evidence on this point except where it is against his interest. Taking into account both the evidence of Mr Hamidi, which the Commission does accept, and the evidence of the draft submission found on the USB at Mr Soliman's workstation, the Commission is satisfied that the submission was drafted by Mr Soliman with input from Mr Hamidi limited to some background information concerning himself and his wife.

Mr Soliman refused to concede that the assertion that AZH was an ITS industry leader was false. Rather, he claimed that it was a very niche industry, that Mr Hamidi had been working for RMS and going to the trials and that, by the time of this tender, would have learnt a lot, both from those trials and Mr Soliman's own training. He reluctantly agreed that it was "probably the wrong wording, I don't know about false, it's probably misleading".

The Commission is satisfied that the claim was false and that Mr Soliman knew it to be false when he included it in the submission. Mr Soliman found it very difficult to accept that AZH's claimed several years of international consultation with government agencies was a lie, saying "from what I know it seems false but I don't know what he did or didn't do that he didn't tell me". Mr Soliman also claimed that he did not know that the reports submitted as examples with AZH's tender submissions were not AZH's own reports. The Commission rejects that denial.

## The tender evaluation process

Mr Singh gave evidence that Mr Soliman had appointed him as the RFT manager from the beginning and made him convenor of the TEC after Mr Chehoud had to withdraw due to his conflict of interest. Mr Soliman asked RMS employee, Barry Everson, to take Mr Chehoud's place and, on the day of the evaluation, 30 October 2017, Mr Thevathasan was replaced at the last minute by Claire Lemarechal.

Ms Lemarechal said that Mr Soliman, Mr Singh and Mr Everson were in the TEC meeting room when she attended and the tender documents were already there in envelopes. She explained that the documents for each tender submission were passed to each member of the TEC in turn, and each person evaluated them against a list of criteria. After everybody had read and evaluated the documents, the scores were collected for each tender. She said that Mr Soliman explained the procedural aspects of the tender to them, but did not speak about any of the tenders or the companies.

She said:

*...he was more about now we do this, now we do that. We need to sign this, you know, the confidential declaration that there's no conflict of interest and things like that.*

Ms Lemarechal confirmed that this was her first experience as a member of a TEC and she was unfamiliar with the RMS procurement manual or with any of the applicable policies for tender evaluations. She said that she knew that only members of the TEC should be privy to the tender submissions, but she thought that Mr Soliman was coordinating the TEC, running the tender and, at the same time, explaining to Mr Singh how it all worked.

Ms Lemarechal assumed that what she read in the AZH submission was true and correct and scored it 6, 6 and 8 out of a possible 10, for the technical, methodology and past experience criteria respectively. Mr Everson scored AZH's submission 4, 6 and 7, and Mr Singh scored it 6, 6 and 9 for the respective criteria.

Mr Singh gave evidence that, by the time of this tender, his understanding was that, having done a few pieces of work for RMS, Mr Hamidi would have had some level of competency in the work that the PSC panel involved. He acknowledged that Mr Soliman's tender requirements included the capacity for a tenderer to conduct end-to-end management of technology trials and ultimately conceded that he was not aware of any trial that AZH had managed in that capacity.

Mr Singh no longer recalled the content of AZH's submission for inclusion on the PSC panel, but he remembered that it attached two reports. He said he had a "quick look through" but did not read in detail. When it was put to him that, based on Mr Singh's observations of his participation in the trials and his knowledge of Mr Hamidi's experience with technology, he knew Mr Hamidi was not capable of coming up with reports such as the ones submitted, Mr Singh said that he assumed Mr Hamidi had undertaken further research. He agreed that he did not check that assumption or question his friend.

The Commission finds that Mr Singh was well aware that AZH had not conducted any end-to-end trials for RMS by the time he received its tender submission. The Commission is satisfied that Mr Singh knew that Mr Hamidi lacked the requisite experience and qualifications in the ITS industry and that he made certain assumptions about the further research Mr Hamidi must have done to produce reports of the technical complexity and calibre of those accompanying AZH's submission. Mr Singh failed to check his assumptions and, by his own admission, failed even to pay close attention to the reports accompanying the submission. The Commission is satisfied that, in recommending AZH's inclusion on the

PSC panel, Mr Singh was influenced by his longstanding and close friendship with Mr Hamidi and turned a blind eye to the truth of the AZH submission because of his serious and undeclared conflict of interest.

On 31 October 2017, the TEC signed off on the tender evaluation report. The TEC recommended that four of the eight tenderers be added to the PSC panel on the basis of a weighted scoring greater than 70%. One of the successful tenderers was AZH, with a weighted score of 75%. None of the TEC members provided a conflict of interest declaration and no conflicts of interest were raised. Mr Soliman was the authorising manager with the financial delegation to enter into negotiations with the successful tenderers.

On 2 November 2017, Mr Singh advised Mr Hamidi by email that AZH's tender had been accepted.

Between 6 and 9 November 2017, Mr Soliman, Mr Singh, Mr Hamidi and Ms Hamidi signed as the respective parties to a deed of agreement between AZH and RMS for the provision of professional services by AZH to RMS for a period of three years.

## The value of AZH contracts increases significantly

Even though Mr Soliman had indicated to Mr Chehoud that the value of work orders from the PSC panel was unlikely to exceed \$50,000, following AZH's appointment to the PSC panel, Mr Soliman awarded four contracts to the company each around, or in excess of, \$200,000 in value.

### Modern portable weigh scale trial – RMS15

On 6 November 2017, the same day that Mr Hamidi and Ms Hamidi signed the deed of agreement with RMS, Mr Singh had issued two separate RFQs to AZH for scoping study reports for the HAENNI and PAT 10C III brands of portable scale. As discussed in the previous chapter, while AZH submitted two quotes in response to these RFQs, in November and December 2017, each for around \$50,000, neither of these quotes proceeded.

On 7 December 2017, a new RFQ was issued, for a field trial and report for modern portable weigh scales. The scope of works required a trial of three or more modern portable weigh scale models and the creation of a detailed report for the RMS. The trial requirements included the procurement of three sets of scales that met certain weight, dimension and certification specifications and a minimum 1,000 vehicle sample set. It required multiple data collection parameters to be met and the provision of a detailed report of the results. The RFQ manager was Mr Soliman.

The evidence obtained by the Commission indicates that, from around late October 2017, Mr Soliman had been working on a procurement plan, at the request of senior management, for the progressive replacement of RMS's entire portable weigh scale fleet.

On 1 November 2017, Brett Patterson, senior manager in Compliance Operations, requested Mr Weeks, director of the Compliance Branch, to approve a project with a possible budget of \$250,000 for the purpose of reviewing and ascertaining the most suitable equipment to procure. Around mid-December 2017, \$2 million funding had become available for an initial procurement of scales. On 21 December 2017, a decision was made to "progress to market" to procure replacement scales. The two-stage procurement of replacement scales for the entire RMS fleet is the subject of chapters 11 and 12 of this report.

In this context, the RFQ for field trials and scoping study for three brands of "modern portable weigh scales" was arguably redundant, given that RMS was shortly going to market in any event. Nevertheless, on 15 December 2017, AZH submitted its quote numbered "RMS15" for this trial in the amount of \$241,175. Its proposal was to procure and trial a set (six scales) each of HAENNI static portable scales, PAT static (with dynamic capability) portable scales and Intercomp static portable scales.

Two other companies, which had been successful tenderers for inclusion on the PSC panel, also submitted quotes; one for the fixed price of just over \$270,000, and the other for just under \$820,000. AZH's fixed price was therefore the lowest. The Commission is satisfied that Mr Soliman drafted AZH's quote for the portable weigh scale trial, and that it was the winning quote, as the lowest, because Mr Soliman, as the RFQ manager, was privy to the size of the competing quotes.

Paul Walker, a technical officer at RMS for around 20 years, joined the HVP Unit in April 2017, when the team that he worked with was moved into that unit and under the direction of Mr Soliman. Mr Walker gave evidence that, in December 2017, he was asked by Mr Soliman to raise a PO for AZH's portable scale study. Mr Walker said that the quotes from the other two companies that had responded to the RFQ were emailed directly to Mr Soliman, who forwarded them to him. Because Mr Walker appeared on the PO, he was the person to whom AZH submitted its invoice and, when he received it, he forwarded it to Mr Soliman who confirmed that it was able to be paid.

As with all of its previous quotes, the terms of AZH's quote required payment prior to the delivery of service and procurement of goods. On 9 January 2018, AZH submitted an invoice for the full amount of its quote to TSS. AZH was paid by RMS on 29 January 2018.

During the Commission's investigation, a report with an AZH logo on its cover page and the title "Modernising Mass Management for Regulators – Scoping Study 2018" was located on a USB secured at Mr Soliman's RMS workstation. There is no evidence that AZH ever submitted the report to Mr Soliman or anyone else at RMS.

A comparison between the AZH report found at Mr Soliman's workstation and the Novation portable weigh scale scoping study report dated 4 May 2016 indicates significant similarities between the two. The layout, headings and font of the contents pages of both are almost identical. AZH's report discusses the additional KPIs of durability and efficacy and has a heading for "local maintenance/calibration support", whereas Novation's report has a heading for "local vendor support". The first paragraph of the executive summary of both reports is essentially the same. The list of abbreviations on the following page is exactly the same. The project background on the following page has only minor changes in phraseology; for example, "mass management technologies" in the AZH report replaces "portable weigh scales" in Novation's, and the number of scales in the RMS fleet has grown from ~550 in Novation's report to ~600 in AZH's report.

The page of both reports that deals with the field trial results summary contains a virtually identical first paragraph and an identical photograph of a heavy vehicle wheel on a scale. The description underneath this photograph in the Novation report states: "Figure 1.0 shows a heavy vehicle axle being weighed by the **AccuWeigh LP600** using standard RMS vehicle weighing procedures" (emphasis added).

The description underneath this photograph in the AZH report states, "Figure 1.0 shows a heavy vehicle axle being weighed by the **Intercomp LP600** using standard RMS vehicle weighing procedures" (emphasis added).

The author of the AZH report has failed to update the model of Intercomp scale apparently trialed by AZH, from the LP600 to the LP788, although the author has been careful to remove any reference to Accuweigh, a competitor of Novation, in the portable weigh scale market.

Both reports contain exactly the same subset of results on the next page and refer to the same appendix 1.3 for the full results. And the similarities continue, except for the scale found in the AZH report to be the most accurate (IRD), the lightest (IRD), the most durable (IRD) and the only one to score 10/10 for work health and safety and ergonomic efficacy (IRD). Unsurprisingly, given these results, the AZH report concluded:

*When tested against the requirements set out by RMS, the IRD 10A III portable weigh scale proved to be the best performing technology, as well as having*



*the longest proven useable lifetime. The other scale models tested had various issues with durability and accuracy and neither are recommended based on a required 20+ year useable life.*

*Additionally, HAENNI does not have a local Sydney support/distributor which is a potential risk for maintenance.*

This is to be contrasted with the conclusion in Novation's May 2016 report – that is, before it had won the sole distributorship of IRD scales in NSW – that the HAENNI was the recommended model for RMS needs. The other significant difference is that AZH was paid almost 10-times as much as Novation had been paid only 18 months earlier for a strikingly similar report.

Mr Soliman denied that there was in fact no trial, and that he used his position to authorise a payment to AZH on the spurious basis that a portable weigh scale trial had been quoted for and was to occur. When asked whether he had received a scoping study report from Mr Hamidi, he said, "this is another one of the ones I'm pretty sure he flicked through a draft, so again I thought he was working on it, again I don't know anymore".

Mr Soliman was taken to the document found on the USB at his RMS workstation. He claimed not to recall preparing the document and in response to a suggestion that he had, he said, "Don't think so. I mean, it looks like a template from the previous one".

What "previous one" Mr Soliman was referring to was not explored with him.

Mr Soliman agreed that he was receiving cash payments from Mr Hamidi at this time.

Mr Hamidi said that, after AZH's appointment to the PSC panel, he would receive an RFQ for what appeared to be more complicated work, that Mr Soliman would create the AZH quote and he would submit it when Mr Soliman told him to. Mr Hamidi gave evidence that this was always on the day the RFQ closed and within the last 10 minutes before the deadline.

Mr Hamidi said that he did not read the RFQ for the modern portable weigh scales trial when he received it on 7 December 2017. He said the quote was sent to him by Mr Soliman and he was not told anything about the project. He had no idea how the amount of the quote, which was significantly higher than previous quotes, was derived.

Mr Hamidi said that he did not expect to be doing any work in connection with this trial because the process at this time was still that he would receive the invoice or quote and forward it on.

The Commission is satisfied that Mr Soliman was the author of the report found on a USB located at his RMS workstation.

The Commission is satisfied that Mr Hamidi did nothing more in this trial than receive the quote and invoice from Mr Soliman and, on his instructions, convert them to PDF format and submit them to RMS. The Commission is satisfied that the invoice for this work was false and that Mr Hamidi knew it was false when he submitted it for payment. The Commission is satisfied that Mr Hamidi knew that he was paid by RMS for work that he had not done.

### **In-ground thermal camera system trial – RMS16**

On 15 December 2017, Mr Soliman issued an RFQ to AZH for a FLIR One Pro thermal camera trial. On 22 December 2017, AZH responded with its quote numbered "RMS16" in the amount of \$93,610. This appears not to have proceeded.

On 23 March 2018, AZH submitted a much higher quote also numbered "RMS16" in the amount of \$179,259. The revised quote was also for a different model of thermal camera, namely the FLIR A65. The revised AZH quote contained a detailed scope of work, which included the development of a thermal camera system using a customised version of the FLIR A65, the development, engineering and fabrication of in-ground housing for the camera, end-to-end field trial management, and a scoping study report analysing the accuracy and efficacy of the thermal camera system. AZH proposed to release concept design drawings and technical specifications for these aspects of the project should its quote be accepted.

A further version of AZH quote RMS16 was found on a USB located at Mr Soliman's RMS workstation in the even higher amount of \$232,210.

On 3 April 2018, Mr Walker drafted a letter of acceptance of AZH's quote for Mr Soliman's signature and, on 19 April 2018, sent a PO in the amount of \$179,259 to Ms Hamidi. The terms of the PO required delivery by 30 June 2018. On 30 April 2018, AZH submitted its invoice for the full amount and was paid by RMS on 16 May 2018.

There is no evidence that AZH ever provided any concept drawings, attended a trial, engineered any in-ground camera housing or submitted any scoping study report to RMS.

The Commission is satisfied that Mr Soliman accepted the AZH quote that he had drafted, including the payment terms, and caused the payment to AZH of \$179,259 before the provision of any goods and services. In doing so, he knew that none of the work in AZH's quote had been or would be done by AZH, or submitted to RMS.

As discussed in the previous chapter, AZH's very first RMS contract had involved attending a trial of the FLIR A-series range of thermal cameras conducted by the technology's vendor, IMC, at Picton Road in February 2017. The scoping study report submitted by AZH following that trial was identical to the vendor's and the Commission is satisfied that it was prepared by Mr Soliman and plagiarised from IMC's report.

Mr Snell gave evidence that, after the first trial of the FLIR thermal camera at Picton Road in February 2017, and following positive feedback from RMS, IMC developed an innovative in-ground housing design for the camera. IMC spent a considerable amount of time and financial resources to develop these products for RMS. The development was co-funded by a grant from the NSW government, but IMC received no financial input for this work from RMS. Mr Snell stated that, on 13 December 2017, a second trial of the newly designed FLIR thermal camera was arranged in consultation with Mr Soliman, who advised that he wanted to capture more data; from approximately 100 vehicles. A multi-day trial was arranged for late March 2018 at the Heavy Vehicles Inspection Bay in Orchard Hills.

On 17 April 2018, Mr Snell provided Mr Soliman with IMC's report from that second trial, titled "Thermographic heavy vehicle defect detection". On 23 April 2018, Mr Soliman sent IMC an invoice for the amount of \$1,199 for the cost of minor road cutting at the Orchard Hills site. Mr Snell authorised funding to RMS of this amount from IMC's grant funding. Mr Soliman told Mr Snell that RMS had no funding available for trialling the system.

The Commission finds that, while Mr Soliman approved payment to AZH of just under \$180,000 for a report that he had plagiarised from the work of the technology vendor, he represented to that vendor that RMS had no funds available to trial the system or pay for its report.

On 18 October 2018, following the execution of a search warrant at Mr Soliman's home, a USB and other items were located at Mr Soliman's RMS workstation and provided to the Commission. Located on that USB was a report dated 22 June 2018, purporting to be the work of AZH, titled "In-ground Thermal Camera Scoping Study".

Mr Snell was provided copies of the AZH reports dated 15 March 2017 and 22 June 2018 and he compared these with the IMC reports provided to Mr Soliman on 23 February 2017 and 17 April 2018, respectively. He said:

*I have reviewed both reports and I can confirm that they are almost identical documents to those that I provided to RMS ... It would appear that AZH have just substituted the company logos and made some minor adjustments to the text. The photos, data*

*and conclusions are all identical. I can confirm that the contents of the original IMC reports contained proprietary information and were to be treated as confidential. When I submitted the reports to RMS, I requested that the reports were not shared to anyone outside the organisation.*

The Commission accepts this evidence.

The Commission found no evidence that the AZH report was ever submitted to Mr Soliman or RMS and the only place it was located was on a USB at Mr Soliman's workstation.

During the public inquiry, Mr Soliman was taken to the IMC report sent to him by Mr Snell on 17 April 2018 and to the same report under the AZH logo, dated 22 June 2018, found only at his workstation. It was put to Mr Soliman that he had removed the IMC information and turned it into a report that appeared to be by AZH. He responded:

*I don't recall changing it but I remember seeing it and resizing the logo. Again, I think it was this one ... I just remember for one which he showed me and it was a bit small ... obviously when I have the file and he's asking me what do I think, I make changes as I thought*

Mr Soliman claimed that he told no one at RMS that he had received this report from AZH because he did not believe the work was finished.

Mr Hamidi gave evidence that he submitted the quote for this and the other contracts under his wife's name in order to try to remove the connection between himself and Mr Soliman. He said that Mr Soliman told him it would be better if the quotes apparently came from his wife and he said this was because what they were doing from the start was unethical.

Mr Hamidi's evidence was that he did not draft or read the quote, he did not supply the goods and services set out in the scope of works, he did not prepare the invoice and he did not insert a PO number into this or any invoice. He agreed that he did submit the invoice and that it was "another false invoice". The Commission accepts this evidence.

The Commission is satisfied that an AZH report titled "In-ground Thermal Camera Scoping Study" dated 22 June 2018, which was found on a USB located at Mr Soliman's workstation, was created by Mr Soliman but never submitted to RMS, despite it being a complete or finalised report. The Commission is satisfied that it was entirely plagiarised from the IMC report sent on 17 April 2018 to Mr Soliman by Mr Snell.

## Modernising ITS field trials – RMS17

On 24 April 2018, Mr Soliman sent AZH an RFQ for “Fibre Optic WIM Research”. On 30 April 2018, AZH submitted a quote numbered “RMS17” in the amount of \$60,000 for the development of a research paper into fibre optic WIM technology. The following day, 1 May 2018, AZH sent a further email to Mr Soliman attaching an “amended” quote for RMS17. The email asked Mr Soliman to disregard the previous quote “due to a typing error”.

In his evidence, Mr Hamidi said that sometimes Mr Soliman would ask him on WhatsApp to reconvert and resend a document if he had not converted it from Word to PDF properly and had thereby failed to remove Mr Soliman as the author or creator of the file. Mr Hamidi could not say that had occurred in this case, but he said there could have been no “typing error” because he did no typing and, if he ever had to resend a file, it was because he had not properly removed Mr Soliman as the author. In any event, the quote for fibre optic WIM research was not progressed.

Another version of quote RMS17, dated 25 May 2018, was located at Mr Soliman’s RMS workstation. It was for “Modernising ITS field trials and scoping study” in the amount of \$230,890. The scope of works is difficult to understand, but seems to have required AZH to procure, trial and report on the same three models of portable weigh scale that it had already and recently quoted and been paid for; namely, the PAT 10A III, the Intercomp LP788 and the HAENNI WL104. The quote also offered, at no extra cost to RMS, to report:

*...on all the potential technologies which would be relevant but did not meet RMS’s minimum mandatory requirements in this RFQ, such as modern WIM’s, including fibre optic WIM’s available on the market now.*

The quote located at Mr Soliman’s workstation was “accepted” by Mr Soliman. At his request, on 13 June 2018, Mr Walker raised a PO request for \$230,890. Mr Walker gave evidence that this was the third project for which Mr Soliman had asked him to raise a PO and that the process followed would have been the same as for the second one. He said they would have sat in a meeting room and looked at the “bids” that had come in from any one of up to four companies on the PSC panel. He said there should have been more than one bid, as he did not recall ever seeing an RFQ where there was only one bidder. The winning tender was chosen on the basis of value for money.

On 14 June 2018, the day after the PO was raised, AZH submitted an invoice for the full amount of the quote, blind-carbon-copying Mr Soliman, and, on 27 June 2018,

\$230,890 was paid by RMS into AZH’s bank account. A version of this invoice was also found at Mr Soliman’s workstation among the records secured by RMS, and provided to the Commission.

Mr Hamidi gave evidence that, for this project and the invoice for procurement, end-to-end trial management and a report, he procured no hardware, attended no trial and prepared no report. The Commission accepts this evidence.

Mr Soliman agreed in evidence that the three models of portable weigh scale in this project were the same as the ones in the previous modernising mass management scoping study for which AZH had already been paid. He said that his involvement in this project was the same as in the previous one; namely, “I would always basically tell him the recommendation for models and the location and the people to talk to. Don’t know what, what happened after that”.

Mr Soliman could provide no evidence about what happened at the trial or its outcome.

Mr Soliman did not dispute the fact that the quote was found at his RMS workstation. He claimed that he thought it was on a USB that “went back and forth” between himself and Mr Hamidi because Mr Hamidi wanted to make a copy of the documents saved on it. He explained that, when he drafted the scope of works for Mr Hamidi, which was Mr Hamidi’s basis for knowing what work he had to do and when he drafted the invoices for him, Mr Hamidi would have to copy the PO number into them. Mr Soliman was asked why he could not have used his private email address to send documents back and forth. He said he did this at the beginning, but it just “progressed” to having a USB whenever they met, so that, if Mr Hamidi needed something, it was there on the USB. Mr Soliman also claimed that there was at least one other USB in existence on which Mr Hamidi used to send in all the projects.

On the mobile telephone seized by the Commission during the execution of the search warrant at Mr Soliman’s home on 18 October 2018, a calendar entry for 18 May 2018 was located. Mr Soliman had sent himself a message to “Clear browser cache and move azh files to USB and password lock personal files”.

When taken to this entry, Mr Soliman agreed that he was reminding himself to move the AZH files he had created from his work computer onto a USB. He did not agree that this was in order to remove evidence of all the AZH files that he had worked on and created himself and ensure there was less likelihood that anyone at RMS would discover his intimate involvement in creating AZH documentation. Mr Soliman responded that that seemed “silly” and, if he had meant to hide it, he would not have kept the USB in a drawer at his desk.

Mr Soliman agreed that he was reminding himself to clear his browser cache but he claimed not to know why he needed to do this. He disagreed that the reason he wanted to password-lock his personal files was to ensure no one could access the files relating to his “scam” with AZH. He denied that he had been preparing AZH quotes, invoices and reports in order to perpetrate a fraud on RMS.

Mr Soliman claimed that “obviously”, if the USB in question was found at his workstation desk, “it doesn’t seem like I’m trying to hide it”. But he conceded that he was not expecting a search warrant to be executed at his home on 18 October 2018, and did not know that the Commission would be able to obtain the USB that he had left at his workstation.

The Commission is satisfied that Mr Soliman’s evidence was tailored to explain the USB found at his RMS workstation containing numerous AZH documents located nowhere else. The Commission finds that Mr Soliman’s evidence in this respect, as in many others, was an attempt to answer the case against him that strained credulity. The Commission is satisfied that the quote for this contract was created by Mr Soliman. The Commission is also satisfied that Mr Soliman drafted AZH’s invoice for \$230,890 and caused payment to AZH, knowing that the quote and invoice replicated the work required under a previous contract for which AZH had already been paid, namely, the procurement and trial of the same three brands of portable weigh scales, followed by a detailed report.

## Heavy vehicle avoidance solution trial – RMS19

The last quote numbered “RMS19” submitted by AZH to RMS was in response to an RFQ issued on 9 August 2018 for a detailed scoping study report on the issue of heavy vehicles avoiding detection by NSW enforcement assets and sites. The work order involved information gathering, proposing and designing a fixed camera solution to identify such vehicles, deploying and installing that camera solution, analysis of data, end-to-end field trial management, and a detailed scoping study report.

Mr Soliman asked Alex Lee, a relatively new member of his team, along with Mr Walker, to issue the RFQ. On 17 August 2018, Mr Lee emailed AZH to advise that the new closing time for the RFQ was 12 pm on 24 August 2018. Mr Hamidi gave evidence that Mr Soliman instructed him via WhatsApp to submit the quote a couple of minutes before cut-off. At 11.57 am on 24 August 2018, AZH submitted quote RMS19 in the amount of \$195,690. Mr Hamidi said Mr Soliman told him that the reason he asked him to wait until a few minutes before the RFQ cut-off before submitting the

AZH quote was in case someone else came in with a lower quote. If that happened, Mr Soliman would have to create and send him another quote, but Mr Hamidi could not recall that ever happening. The Commission accepts this evidence.

On 27 August 2018, Mr Lee emailed Ms Hamidi to advise that AZH’s quote had been accepted. On 17 September 2018, AZH submitted an invoice to TSS and, on 8 October 2018, RMS paid AZH \$195,690. There is no evidence that AZH ever attended a trial or submitted a report to RMS in relation to this project.

Mr Soliman claimed in evidence that he provided the scope of works for the AZH quote for this trial. He said he did not see a finished, or even a draft report for this project, but conceded that he had approved payment to AZH. He disagreed that Mr Hamidi did not have any relevant experience to undertake the sort of work involved in this project, saying “it’s not a very complex thing to do”. He agreed that these were serious pieces of work but said, “I wouldn’t particularly class it as rocket science or something that he couldn’t do ... from what I saw there was nothing stopping him doing it”.

By 8 October 2018, AZH had been paid a total of \$1,312,864 for 14 contracts awarded to the company since January 2017. Mr Hamidi only attended three of the 13 trials required by these contracts. Other than the two plagiarised reports submitted in relation to the first two trials, no other report was ever submitted to RMS by AZH. Ten days after this last payment to AZH, the Commission executed a search warrant at the home of Mr Soliman and, that day, RMS secured a number of items at Mr Soliman’s RMS workstation and later provided them to the Commission.



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## Chapter 7: Cash payments and a USB left in the letterbox

This chapter examines the evidence concerning Mr Hamidi's cash payments to Mr Soliman from mid-2017 and the financial arrangement between them. It also examines Mr Soliman's conduct following the Commission's execution of a search warrant at his home on 18 October 2018, including his instructions to Mr Hamidi to delete evidence, and his attempts to create other evidence to mislead the Commission's investigation.

The Commission's corrupt conduct findings in relation to the conduct, set out in the preceding two chapters of this report, are also set out in this chapter.

### Mr Hamidi's payments to Mr Soliman

As discussed in the previous two chapters, between January 2017 and August 2018, AZH was paid over \$1.3 million from contracts awarded by Mr Soliman. RMS payments for the 14 contracts commenced on 8 March 2017 and ended on 8 October 2018. All RMS payments were made into AZH's business bank account to which Ms Hamidi was the sole signatory, but to which Mr Hamidi had access.

As discussed earlier, it was Mr Hamidi's evidence, which is accepted by the Commission, that Mr Soliman devised an initial 75/25 per cent split in profits while he "trained" Mr Hamidi to do the RMS work. Mr Soliman requested that he be paid his portion in cash.

Mr Hamidi gave evidence that he paid a "salary" into his wife's personal account from the AZH business account, paying the appropriate tax on it. In order to make cash payments to Mr Soliman, he made cash withdrawals from both his wife's account and his own. When he went to the ATM, he used his wife's and his own key cards to withdraw the \$2,000 limit from each account; being \$4,000 at a time.

Mr Hamidi did not make a record of what he gave

Mr Soliman. However, each time he paid Mr Soliman, he saw Mr Soliman enter something into his telephone. He understood that Mr Soliman was noting the payments there. He said that, shortly after 10 March 2018, Mr Soliman sent him a record on WhatsApp of dates and payments made up to, and including, that date.

Mr Hamidi gave evidence that after he found out that Mr Soliman was under investigation by the Commission, he reviewed his bank account records and Mr Soliman's record of payments, married up his withdrawals and payments to Mr Soliman and created a record of these, which he provided to the Commission. A copy of this record is reproduced below.

**Figure 1: Record created by Mr Hamidi of his cash payments to Mr Soliman**

\$29,000	04/06/17
\$46,000	23/06/17
\$18,000	26/08/17
\$20,000	11/12/17
\$8,000	19/01/18
\$8,000	9/2/18
\$8,000	10/3/18
\$8,000	13/4/18 (approx payment physical dates)
\$8,000	10/5/18 (approx payment physical dates)
\$8,000	10/6/18 (approx payment physical dates)
\$8,000	12/7/18 (approx payment physical dates)
\$6,000	10/8/18 (approx payment physical dates)
\$175k Total Cash Payments	

Mr Hamidi said the record set out all the payments made to Mr Soliman except for one payment of approximately \$2,000, which was a separate payment he made in 2018 for Mr Soliman's buck's party.

Mr Hamidi said the first seven payments correspond with the list of seven payments that Mr Soliman had sent him via WhatsApp, which recorded payments to 10 March 2018. Based on his review of his bank records, Mr Hamidi added the additional payments made to Mr Soliman from April 2018 onwards.

Mr Hamidi's record shows a first payment of \$29,000 on 4 June 2017 and a final payment of \$6,000 on approximately 10 August 2018. The total amount of the cash payments recorded between June 2017 and August 2018 is \$175,000. Mr Hamidi said that he recalled the last payment he made Mr Soliman was in August 2018 because he had torn three ligaments in his ankle and Mr Soliman came to his house to get the money. He was wearing a moonboot and had to waddle his way to an ATM near his house to withdraw the cash.

He said that, in September 2018, he transferred money across to his wife's account in preparation to give it to Mr Soliman, but that never eventuated.

When the Commission executed a search warrant at Mr Soliman's home on 18 October 2018, a mobile telephone belonging to Mr Soliman was seized. The Commission located a list in the mobile telephone's electronic notes of dates and corresponding monetary amounts titled "Ali \$". The dates ranged between 4 June 2017 and 9 August 2018, with \$29,000 recorded against the first date, and \$6,000 against the last. The most commonly noted amount against each date was \$8,000 and the total sum was \$177,450. The list included an entry "Bux", against which was recorded \$2,450. A copy of this list is reproduced below. Without the "Bux" entry, which corresponds with Mr Hamidi's evidence about the buck's party payment, the total amount of cash payments recorded was \$175,000, which corresponds to the total that was independently recorded by Mr Hamidi.

**Figure 2: List on Mr Soliman's mobile telephone titled "Ali \$"**

Notes (1)

#	Time	Note	Deleted
1	<p><b>Created:</b> 1/01/1970 10:00:00 AM(UTC+10)</p> <p><b>Modified:</b> 9/08/2018 7:15:08 PM(UTC+10)</p>	<p><b>Title:</b> Ali \$</p> <p><b>Body:</b> 4/6/17 \$29k 23/6/17 \$46k 26/8/17 \$18k 11/12/17 \$20k 19/1/18 \$8k Bux- \$2450 9/2/18 - \$8k 10/3/18 - \$8k 12/4/18 - \$8k 9/5/18 - \$8k 5/6/18 - \$8k 10/7/18 - \$8k 9/8/18 - \$6k</p> <p><b>Source file:</b> Samsung GSM_SM-G960F Galaxy S9.zip/apps/com.workpail.inkpad.noteepad.notes/db/note_pad.db : 0x0 (Size: 65536 bytes)</p>	<p><b>Manually decoded:</b> Yes</p>

Both lists record the same dates and amounts up to, and including, 10 March 2018. Thereafter, the five remaining dates in Mr Hamidi's ledger are one or two dates later than the five remaining dates in Mr Soliman's list, but the cash amounts recorded against each are identical. It is important to observe that Mr Soliman's list had not yet been raised or tendered in evidence in the public inquiry at the time that Mr Hamidi gave his evidence about the record he had made, and Mr Hamidi could not have learnt about or seen it.

Mr Hamidi gave evidence that, in around early June 2017, he gave Mr Soliman "a whole bunch of money here and there" until he had to tell Mr Soliman that he could not keep giving him such large sums because the amount he could withdraw from the ATM was limited. Thereafter, Mr Soliman asked for \$8,000 each month and that remained their arrangement. This is reflected in both lists of payments, which record sums of \$29,000, \$40,000, \$18,000 and \$20,000 at a time in 2017, and sums of \$8,000 throughout 2018. Mr Hamidi said that \$8,000 was agreed on because that amount would reduce the income tax he needed to pay, given that the more he paid out as a "salary" to his wife, the higher the income tax bracket in which she would appear to belong.

Mr Hamidi said that Mr Soliman would send him a message on WhatsApp when he needed money. Sometimes he would meet Mr Soliman at a café or chicken shop, where he gave Mr Soliman the money and they would have a meal together. After Mr Soliman had built his new house, around March 2018, Mr Hamidi went there a couple of times to deliver cash.

The cash payments made to Mr Soliman did not in fact equate to 75% of AZH's earnings. Mr Hamidi said the agreement between them was that the 75% would be paid to Mr Soliman over time. They also discussed plans to acquire a business together, such as a gym or a café, using the money paid to AZH by RMS as capital, with the understanding that Mr Soliman would have a 75% interest in any joint business.

The financial evidence available to the Commission indicates that the balance of the AZH business account, as at 1 April 2019, was \$679,401.93. Mr Hamidi said that some of the funds had been paid in tax, some had gone to Mr Soliman, and some had been used by Mr Hamidi for personal expenses. He said that those personal expenses included money to finish off the building and landscaping on his own house, his wife's HECs debt and other general bills and expenses.

Mr Soliman admitted that he had received cash payments from Mr Hamidi, but denied that the amount totalled approximately \$175,000.

Mr Soliman claimed that the record of monetary amounts he kept on his mobile telephone was not a record of the cash he received from Mr Hamidi, but a record of what Mr Hamidi told him was the sum he had withdrawn from the bank for his wife's salary. Mr Soliman claimed that Mr Hamidi said he would give Mr Soliman half of his wife's salary to train him in the ITS field, so Mr Soliman recorded Ms Hamidi's total alleged salary in his telephone. Mr Soliman said the reason he did this was so that, when he got home and counted the money, he could tally it with Ms Hamidi's alleged salary to see whether he had in fact received half. He said that it was also a way of recording *when* he received payments, which served as a backup for the record he kept of the actual amounts he received using Wickr (in case he lost the Wickr record, which, of course, he ultimately did). The Commission rejects this evidence.

Mr Soliman claimed he did not take money for the first six months he was training Mr Hamidi because Mr Hamidi did not offer him any and he did not ask. He said the cash payments he received were not connected to any particular RMS project, but were made on an ongoing basis while he was training Mr Hamidi. Mr Soliman said that his training consisted of project planning, recommendations about the sites for the trials and the vendors to contact. When he was asked why he accepted the money, Mr Soliman said "because I am a bloody idiot". He said he spent the money he received from Mr Hamidi on his wedding, a couple of holidays and some bills.

Mr Soliman was taken to evidence he had given the Commission under compulsory examination in April 2019, when he told the Commission that he had been "moonlighting" when he was training Mr Hamidi and had taken a fee from him that varied, but was "on average six grand ... per project basically that he needed guidance for". Then, he had admitted earning approximately \$75,000 from Mr Hamidi for assisting him with plans, options for hardware and technology and trial locations, and said that he would give Mr Hamidi these tutorials at his house or a café. Then, he said he kept a record of these payments on Wickr, but did not recall whether he had kept another copy somewhere else. Mr Soliman refused to accept that his evidence had changed in relation to the timing, amount, reason for, and recording of the payments he received from Mr Hamidi.

The Commission is satisfied that the \$175,000 paid by Mr Hamidi to Soliman in cash did not purport to represent 75% of AZH's earnings from RMS, which, by 8 October 2018, would have amounted to over \$975,000, or \$800,000 in addition to the \$175,000 cash payments. The Commission accepts Mr Hamidi's evidence that his and Mr Soliman's intention was that the cash payments would be ongoing and that he and Mr Soliman were also



discussing embarking on a business venture together using AZH earnings as capital. Mr Soliman's interest in any such business would be 75%. The Commission is satisfied that the fact that a substantial sum of money, in the amount of just under \$700,000, remained in the AZH business account, as at April 2019, supports Mr Hamidi's evidence.

The Commission does not accept the submission made on behalf of Mr Soliman that Mr Hamidi's payments to Mr Soliman stopped in August 2018 because of a unilateral decision by Mr Hamidi that he no longer needed Mr Soliman's assistance and could complete his own contracts without Mr Soliman's training. As discussed in chapter 6, the evidence indicates that Mr Soliman drafted a further quote for AZH in late August 2018 and an invoice for \$195,960 on 17 September 2018; that is inconsistent with a proposition that Mr Hamidi told Mr Soliman he would be making no further payments because he could do the work alone.

The Commission is satisfied that the list located on Mr Soliman's telephone headed "Ali \$", showing 13 payments between 4 June 2017 and 9 August 2018, totalling \$175,000, is an accurate record made by Mr Soliman of the cash payments made to him by Mr Hamidi. Mr Hamidi's independently created ledger, which lists identical sums of money and almost identical dates, as well as his evidence about the payment made in connection with Mr Soliman's buck's party, strongly support the Commission's finding.

The Commission finds that Mr Soliman's evidence in the public inquiry concerning significant matters about Mr Hamidi's cash payments to him was materially different from the evidence he gave under compulsory examination some months earlier. The Commission finds that Mr Soliman gave untruthful evidence on both occasions.

The Commission accepts Mr Hamidi's evidence as credible, against interest and entirely consistent with the documents and with the list of payments located on Mr Soliman's telephone, which he had not yet seen when he gave his evidence in the public inquiry.

## Mr Soliman's conduct after the search warrant

### "Delete everything"

On the morning of 18 October 2018, the Commission executed a search warrant at both Mr Soliman's home and at Mr Thammiah's home, seizing a number of items, including mobile telephones, electronic devices, USBs and documents. At the same time, items at Mr Soliman's RMS workstation were secured and later provided to the Commission.

Mr Hamidi gave evidence that, later the same day, Mr Soliman's brother, Shady, came to his house and told him that Mr Soliman had been "raided by ICAC". Shady told Mr Hamidi that his brother had asked him to go to Mr Hamidi's house to tell him he had to delete everything he had. Mr Hamidi said that, at that time, he had no idea what ICAC was and asked if he could speak to Mr Soliman. Shady told Mr Hamidi that the Commission had confiscated his brother's telephones and laptop. Shady called his mother's house and Mr Soliman came to the telephone.

Mr Hamidi gave evidence that he then had a conversation with Mr Soliman to the following effect:

*[Mr Hamidi]: what's happened?*

*[Mr Soliman]: it's bad. I've been raided.*

*[Mr Hamidi]: what do you mean it's bad, what, you told me everything was done?*

*[Mr Soliman]: I fucked up. You need to delete all the emails and anything you have from me, including the email account.*

*[Mr Hamidi]: I'm not going to delete the email account because that just looks very suspicious to completely wipe an email address.*

Mr Hamidi gave evidence that, during this conversation, Mr Soliman told him to delete the WhatsApp communication between them and the WhatsApp application as well. Mr Soliman also told him that he had a USB at work that held the invoices and quotes he had created and that was what he was really worried about. He asked Mr Hamidi to go to Mr Singh's house and ask Mr Singh to get the USB from work. Mr Hamidi said he did not do this and that even Shady told his brother that this was "a very stupid idea".

Mr Hamidi said that, before he left, Mr Soliman's brother told him he should probably speak to a lawyer. Mr Hamidi said that Shady had no idea what he and Mr Soliman were doing and told him just to do what was best for his family.

Mr Soliman agreed that he asked his brother to go to Mr Hamidi's house on 18 October 2018, after the Commission had executed a search warrant at his home, and he agreed that he spoke to Mr Hamidi when his brother got there. He categorically denied telling Mr Hamidi to delete everything. The Commission rejects that denial. The Commission accepts Mr Hamidi's evidence that Mr Soliman told him to delete emails, WhatsApp communication and anything else Mr Soliman had sent him.

Mr Hamidi deleted the WhatsApp application from his telephone as well as the AZH email account. He said he immediately restored the email account because he believed it was “just too suspicious to delete it”, but deleted all the email communications by which Mr Soliman had sent him quotes and invoices, from both the AZH and his personal email accounts. He also deleted from his laptop any other documents that Mr Soliman had sent him in Word format and asked him to convert. The only files that remained were the documents converted to PDF that had been submitted to RMS.

### Meetings between Mr Hamidi and Mr Soliman

Mr Hamidi told the Commission that, on around 16 November 2018, he met Mr Soliman at the latter’s lawyer’s office. He had received a voicemail message from Mr Walker following up the whereabouts of the AZH report concerning an in-ground thermal camera scoping study and had contacted Mr Soliman’s lawyer. During the meeting, Mr Soliman told him he had not done the work and “that it was all fraudulent, it was all classified as fraud because he hadn’t completed the work”. Mr Soliman told Mr Hamidi that the work needed to be finished. When Mr Hamidi said he did not know how to do the work because he had never been trained, the two of them arranged to meet a couple of hours later that day at a Castle Hill coffee shop for Mr Soliman to give Mr Hamidi instructions on how to complete the work that had not been done.

Mr Hamidi gave evidence that he met Mr Soliman at the Castle Hill coffee shop later that day. In the meantime, he had looked back at the PDF versions of the AZH quotes he had saved on his computer and realised that many of them had required the procurement of equipment. He asked Mr Soliman when he met him how they could complete the work if they had to acquire equipment for RMS that they did not have. Mr Soliman told him that there was nothing they could do about that other than try to finish the work that was left.

Mr Soliman gave Mr Hamidi instructions to contact the vendor and return the call to Mr Walker asking to organise a second trial because the first trial had not worked out. He also told Mr Hamidi that he had already completed the scoping study for that project and that “it was sitting on his desk when ICAC raided him”.

The AZH in-ground thermal camera scoping study report, as discussed in chapter 6, was located on a USB containing AZH documents found at Mr Soliman’s workstation. As discussed, the Commission is satisfied that the report was entirely plagiarised by Mr Soliman from the report of the vendor, IMC. Mr Soliman had caused payment of just under \$180,000 to AZH but had

told the vendor, whose work was stolen, that RMS had no funding for the trial.

At the Castle Hill coffee shop on Friday, 16 November 2018, Mr Hamidi and Mr Soliman arranged to meet again the following Monday at the same place. Mr Soliman asked Mr Hamidi to bring the quotes, invoices and scoping studies. Mr Soliman told him he would finish the scoping studies that he could and would provide instructions or project plans about how to finish the other ones. Mr Soliman denied this meeting occurred.

According to Mr Hamidi, on the morning of the following Monday, he purchased a USB from Officeworks and transferred all the files that he had saved on his laptop onto the USB. Later that day, he met Mr Soliman in an alleyway near the carpark of a gym in Castle Hill because the coffee shop was closed. Mr Hamidi handed Mr Soliman the USB. Mr Soliman told him that he would complete what he could of the studies and provide instructions about how to deal with the others, so that if ICAC “raided” Mr Hamidi, he would have the completed documents to establish he had done the work. When Mr Hamidi asked Mr Soliman how he could complete the work without the data or information, Mr Soliman said he would do it to the best of his abilities and the worst case would be that Mr Hamidi would just be considered a negligent and inexperienced vendor if the documents he produced were poor.

Mr Soliman said they should meet the following Tuesday, 27 November, at Stanhope Gardens, where he would provide Mr Hamidi with the completed documents and the instructions for those projects that had required the procurement of equipment. Mr Soliman said that they should meet at 10.30 am on that day and instructed that, if one of them was not there by 10.45 am, the other needed to leave, as that would indicate that something had happened.

Mr Soliman denied asking Mr Hamidi for any documents or saying that he would finish off scoping study reports that were incomplete. He denied meeting Mr Hamidi on 19 November 2018, outside the Castle Hill gym in an alley near the carpark. He denied taking a USB from Mr Hamidi other than the one Mr Hamidi brought to his house later that month and asked him to look at. He said he had only held that USB for 10 seconds before handing it back. Mr Soliman denied placing a USB in Mr Hamidi’s letterbox in late November or early December 2018. He denied that he had saved a number of documents on it, including the reports and project plans itemised above.

### The “letterbox” USB

Mr Hamidi said that he never met or spoke to Mr Soliman again after that. That afternoon, on 19 November 2018, he met with his solicitors and took their advice.

Approximately one or two weeks later, Mr Hamidi found a USB in his letterbox. It was the same USB that he had given to Mr Soliman on 19 November 2018.

Mr Hamidi gave evidence that he placed the USB into a ziploc bag and took it to his solicitor. Mr Hamidi and his solicitor together opened the files on the USB and Mr Hamidi saw that it contained completed scoping study reports and project plans. Mr Hamidi said that, other than the two scoping studies he had submitted to RMS, he had never seen any other scoping study until he saw the files contained on the USB. As discussed in chapters 5 and 6 of this report, the two scoping study reports he submitted to RMS were for the first two trials Mr Hamidi ever attended and were the same two reports submitted with AZH's tender submission for inclusion on the PSC panel.

On the advice of his solicitor, Mr Hamidi provided the Commission with the USB. The following documents saved on that USB were not otherwise contained in RMS records or in any other records obtained in the course of the Commission's investigation. The only place they have been located is on the USB provided by Mr Hamidi to the Commission. The documents are as follows:

- TIRTL and thermal scanner integration report scoping study report (RMS03)
- TIRTL and LTI dimension scanner scoping study report (RMS04)
- TIRTL and WIM integration field trial scoping study report (RMS05)
- Cooled v Non-Cooled Thermal Imaging Sensors report (RMS06)
- Houston Radar scoping study report (RMS09)
- Heavy Vehicle Safety and Trends Report, NSW (RMS10)
- PAT/IRD 10C III report (RMS12)
- a "project plan" for the HAENNI dynamic portable scales trial (RMS11)
- a "project plan" for a "full comprehensive side by side comparison of static scales to be completed before 2020" (RMS15).

All of the scoping study reports contained on the USB are undated. The project plan for the HAENNI dynamic portable scales trial contains the note "Project 11 OR 13 was not progressed by RMS".

As discussed in chapter 5 of this report, RMS13 did not progress because, on the day that quote RMS13 was drafted by Mr Soliman, AZH signed the deed of agreement with RMS for its appointment to the PSC panel and the HAENNI trial, for which AZH quoted

less than \$50,000, could be abandoned for the far more lucrative contract coming.

The project plan for the "comprehensive side by side comparison of static scales to be completed before 2020" contains the note, "Desktop exercise draft completed for RMS using RMS scales they had on stock and previous data for HAENNI. Draft hard copy sent".

As discussed in chapter 6, a report with an AZH logo on its cover page and the title "Modernising Mass Management for Regulators – Scoping Study 2018" was located on a USB secured at Mr Soliman's RMS workstation. There is no evidence that it was ever submitted to RMS by AZH and it was located nowhere else. As set out in chapter 6, the Commission is satisfied that Mr Soliman drafted this report, substantially copied from a report he had drafted for Novation in May 2016 in relation to a static portable scale trial. As for the Novation report, AZH's report concerned RMS scales already being used and, as stated in the project plan note, above, it contained "previous data for HAENNI".

The Commission finds that, sometime in the latter part of November 2018, Mr Soliman prepared scoping study reports for a number of contracts awarded to AZH and provided those reports to Mr Hamidi by saving them on a USB, which he placed, or caused to be placed, in Mr Hamidi's letterbox at his home. The Commission finds that Mr Soliman did so to enable Mr Hamidi to represent that he had prepared the reports that AZH had been engaged and paid to provide, should that become necessary in the context of the Commission's investigation about which Mr Soliman had become aware.

The Commission accepts Mr Hamidi's evidence about the circumstances of his receipt of the USB left in his letterbox and the USB's contents. The reports found on the "letterbox USB" were not located in any other records or material obtained during the Commission's investigation. It was against Mr Hamidi's own interests to admit that he had not prepared those reports and that they had only been provided to him by Mr Soliman after the Commission's investigation became known.

The evidence given by Mr Hamidi about these matters is also consistent with the evidence of other reports not submitted by AZH to RMS, but located nowhere else but on a USB found at Mr Soliman's workstation, including the in-ground thermal camera scoping study report and the modernising mass management scoping study report, discussed in the previous chapter.

The Commission is satisfied that Mr Soliman produced the reports and project plans on the letterbox USB. The Commission is satisfied that there were matters noted on the project plans that could only have been known by Mr Soliman, including which project RMS did

not proceed with (RMS13) and the fact that a report had already been created for a purported portable weigh scale “side by side comparison” and was located on a USB that would be found at his RMS workstation.

In addition, the project plan that suggested the scale comparison could be completed before 2020, reflects Mr Soliman’s evidence (discussed in chapter 5) that Mr Hamidi actually had until 2020 to complete the reports, which the Commission rejects as absurd and false. This was the reason Mr Soliman gave for not pressuring Mr Hamidi to produce them earlier; even though he caused AZH to be paid for them in 2017 and 2018.

The Commission does not accept the submission made on Mr Soliman’s behalf that Mr Hamidi’s evidence about the letterbox USB documents should be rejected because of content on the USB that indicates that Mr Soliman did not create the documents, and that Mr Hamidi’s evidence is false. The content said to indicate that Mr Soliman could not have created the documents appears in the project plan for a “full comprehensive side-by-side comparison of static scales to be completed before 2020”:

*1) Procurement: PAT/IRD 15CIII – 6 scales. Confirm with IRD who local distributor are? No online information.*

On Mr Soliman’s behalf, it was submitted that, because Mr Soliman knew that the local distributor was Novation, the document must have been created by someone without that knowledge.

The Commission is satisfied that the author of the documents on the USB provided by Mr Hamidi to the Commission was not attempting to truthfully record matters. It is satisfied that, because the purpose of the document was to create a pretence that Mr Hamidi had prepared it, the author would not have referred to the name of IRD’s local distributor, given that Mr Hamidi would not, in the normal course, be aware of that information. Since the Commission finds that Mr Soliman created the document based on the evidence outlined above, content on which the submission for Mr Soliman relies, only bolsters the Commission’s conclusion that his intention was to create that pretence.

The Commission is satisfied that Mr Soliman’s conduct in creating the documents on the letterbox USB can be considered an admission that Mr Soliman knew he had miscondacted himself in relation to AZH. Mr Soliman knew that:

- Mr Hamidi had not prepared a large number of the reports for which RMS records would indicate he had been engaged and paid to provide; in some cases, many months previously

- he had used his position to facilitate the payment of invoices to AZH
- the absence of legitimate reports by AZH would reveal or expose the falsity of those invoices
- he had been receiving large amounts of cash from Mr Hamidi, the source of which was the RMS funds received by AZH.

The Commission finds that Mr Soliman completed the reports and provided them to Mr Hamidi so that Mr Hamidi would have the reports among his records in the event that a search warrant was executed at his home.

The Commission does not accept the submission made on behalf of Mr Soliman that Mr Hamidi’s letterbox USB evidence should be rejected as “entirely fanciful” because the “notion that after being raided by ICAC, [Mr] Soliman would create false documents and drop them in [Mr] Hamidi’s letterbox defies belief”. The Commission finds that such a notion concerning Mr Soliman’s conduct does not defy belief at all. It is consistent with other evidence of his conduct, such as his plagiarism of the reports of technology vendors IMC and SICK to pass off their work as AZH’s, and his causing payment of \$1.3 million to AZH in the knowledge that it had done none of the work for which it was paid. It is also consistent with his conduct in arranging the contracts to be awarded to Novation (discussed in the earlier chapters of this report) and his conduct in rigging and awarding tenders to Novation for millions of dollars worth of procurement (discussed in the chapters that follow).

## Corrupt conduct

### Mr Soliman

#### (i) The 14 contracts

Between July 2017 and August 2018, Mr Soliman misused his position as manager of the RMS HVP Unit to arrange for contracts to be awarded to AZH, his friend’s company, being:

- January 2017 contract for a scoping study and trial of the IMC thermal camera, for which AZH was paid \$31,900 by RMS
- January 2017 contract for a field trial and scoping study of the SICK dimension scanner, for which AZH was paid \$31,900 by RMS
- January 2017 contract for a field trial and scoping study for the TIRTL and Optris thermal scanner, for which AZH was paid \$33,000 by RMS
- January 2017 contract for a field trial and scoping study for the TIRTL and LTI dimension scanner, for which AZH was paid \$33,000 by RMS



- January 2017 contract for a field trial and scoping study for integration of the TIRTL and WIM, for which AZH was paid \$30,800 by RMS
- April 2017 contract for trial and scoping study for Houston Radar technology, for which AZH was paid \$33,000 by RMS
- April 2017 contract for a two-phase report on heavy vehicle crash analysis, for which AZH was paid \$66,000 by RMS
- May 2017 contract for field trials and scoping study for thermal and cold cameras, for which AZH was paid \$99,000 by RMS
- July 2017 contract for trial of HAENNI portable scales, for which AZH was paid \$53,625 by RMS
- August 2017 contract for trial of PAT 10C III portable scales, for which AZH was paid \$53,625 by RMS
- December 2017 contract for trial and study of modern portable scales, for which AZH was paid \$241,175 by RMS
- March 2018 contract for in-ground thermal camera trial and study, for which AZH was paid \$179,259 by RMS
- June 2018 contract for modernising ITS field trials and study, for which AZH was paid \$230,890 by RMS
- August 2018 contract for trial and study of heavy vehicle avoidance, for which AZH was paid \$195,690 by RMS.

In each case, he did so for the purpose of improperly benefiting Mr Hamidi and knowing that he would also benefit financially through payments made to him by Mr Hamidi/AZH.

Mr Soliman's conduct was corrupt for the purposes of s 8(1)(b), s 8(1)(c) and s 8(2A)(c) of the ICAC Act. It involved the dishonest and partial exercise of his official functions and dishonestly obtaining, or assisting in obtaining, the payment or application of public funds for private advantage. It constitutes a breach of public trust on the part of Mr Soliman in that he used his public official position for the ulterior purposes of friendship and, ultimately, personal profit.

His conduct comes within s 9(1)(a) of the ICAC Act in that it could constitute or involve offences of fraud pursuant to s 192E of the Crimes Act. Alternatively, it could constitute or involve an offence of aiding and abetting Mr Hamidi in the commission of fraud offences pursuant to s 192E of the Crimes Act. Such conduct

could also, for the purpose of s 9(1)(a) of the ICAC Act, constitute the offence of misconduct in public office.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman committed offences under s192E of the Crimes Act and misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is also satisfied that, for the purpose of s 74BA of the ICAC Act, Mr Soliman's conduct is serious corrupt conduct. Mr Soliman's conduct involved participation in a deliberate and dishonest scheme with his friend, Mr Hamidi, to divert a significant amount of public money, namely \$1.3 million from January 2017 to August 2018, from the important road safety functions of the unit he managed in order to profit AZH. His conduct involved a significant degree of planning and deceit. Mr Soliman used his position as the manager of the HVP Unit to exploit weaknesses in the procurement processes and award AZH multiple contracts without scrutiny. He knew that he, and not AZH, would do any work purporting to emanate from AZH and that none of that work was of benefit to RMS.

#### (ii) The PSC panel

Between September and November 2017, Mr Soliman improperly exercised his public official functions in the tender process for the PSC panel in order to ensure that AZH was a winning tenderer and was appointed to that panel. He:

- manipulated the specifications of the request for tender for the PSC panel to favour AZH, by removing tender requirements he knew that AZH could not satisfy and foregrounding requirements he knew that he could represent AZH as satisfying
- drafted AZH's tender submission for the PSC panel
- drafted a submission for AZH that was false and misleading in all material respects in its representations about AZH's experience and technical skills, and included as examples of AZH's work two reports that he had himself entirely plagiarised from the work of genuine vendors
- appointed Mr Singh, a person he knew to be a close friend of Mr Hamidi's, to convene the TEC, knowing that AZH would be lodging a submission

- attended the tender evaluation on 30 October 2017, although he was not on the TEC
- failed to make any declaration of a conflict of interest in relation to AZH.

Mr Soliman's conduct was corrupt for the purposes of s 8(1)(b), s 8(1)(c), s 8(1)(d) and s 8(2A)(c) of the ICAC Act. It involved the dishonest and partial exercise of his official functions. It involved a breach of the public trust, in that it was not motivated to achieve competitive pricing and cost efficiencies for RMS, but to facilitate the opportunity for Mr Soliman to award significantly more lucrative contracts to AZH than had previously been possible under the procurement rules, in order to maximise profit for Mr Hamidi and ultimately himself.

It involved the misuse of information or material that Mr Soliman had acquired in the course of his official functions for the benefit of his friend, Mr Hamidi, and ultimately himself. Mr Soliman manipulated the RFT to require the submission of at least two examples of scoping study reports. He did this so that AZH could pass off as its own work two reports from genuine vendors that Mr Soliman had received in his capacity as the manager of the HVP Unit.

It involved conduct that could impair public confidence in public administration, in that it involved Mr Soliman using his position to dishonestly obtain, or assist in obtaining, the payment or application of significant public funds for the private advantage of his friend, Mr Hamidi, and ultimately himself.

For the purpose of s 9(1)(a) of the ICAC Act, the common law offence of misconduct in public office is relevant, the elements of which have been set out earlier in this report.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if facts as found were proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman had committed the offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

For the purpose of s 9(1)(c) of the ICAC Act, this conduct could also constitute or involve reasonable grounds for dismissal of Mr Soliman. Manipulating the RFT tender to favour his friend, drafting his friend's tender submission, misleading RMS with that tender submission, stealing the intellectual property of genuine RMS vendors and doing so for the financial benefit of his friend and ultimately himself, would involve such substantial breaches of the applicable RMS code of conduct and Mr Soliman's employment contract as to warrant reasonable grounds for dismissal.

The Commission is satisfied that, if the facts were proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that there were grounds for dismissing Mr Soliman. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is also satisfied that, for the purposes of s 74BA of the ICAC Act, this is serious corrupt conduct. The conduct was motivated by Mr Soliman's desire to position AZH to obtain further and bigger contracts as a result of its inclusion on the PSC panel. His manipulation of the tender requirements was to ensure that AZH's tender would be successful. Once a contractor on the panel, Mr Soliman chose AZH's quotes as the winning quotes for another four projects to the total value of over \$850,000. Mr Soliman stood to personally profit from these larger projects.

Mr Soliman had a serious and deliberately undeclared conflict of interest. He engaged in pre-meditated conduct involving a significant level of planning and dishonesty.

As manager of the HVP Unit, Mr Soliman exploited the influence he held over Mr Singh when he appointed him as convenor of the TEC, knowing that Mr Singh's close friend, Mr Hamidi, would be submitting a tender, and that Mr Singh had a conflict of interest that should have precluded this appointment.

### (iii) Payments received by Mr Soliman

Between 4 January 2017 and 9 August 2018, Mr Soliman received \$177,450 in 13 payments from Mr Hamidi as an inducement or reward for exercising his official functions to favour AZH and award it multiple RMS contracts. This is conduct that:

- adversely affected, either directly, or indirectly the honest or impartial exercise of official functions by Mr Soliman, and therefore comes within s 8(1)(a) of the ICAC Act
- constituted or involved the dishonest or partial exercise by Mr Soliman of his official functions and therefore comes within s 8(1)(b) of the ICAC Act
- constituted or involved a breach of public trust on the part of Mr Soliman and therefore comes within s 8(1)(c) of the ICAC Act
- impaired or could impair public confidence in public administration and involved dishonestly benefitting from the payment or application of public funds for private advantage and therefore comes within s 8(2A)(c) of the ICAC Act.

Section 249B of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. Section 249B(1) of the Crimes Act provided:

*(1) If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit—*

*(a) as an inducement or reward for or otherwise on account of—*

*(i) doing or not doing something, or having done or not having done something, or*

*(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,*

*in relation to the affairs or business of the agent's principal, or*

*(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*

*the agent is liable to imprisonment for 7 years.*

When Mr Soliman's conduct is analysed, the relevant elements of a possible offence against s 249B(1) of the Crimes Act are as follows:

- an agent (Mr Soliman)
- corruptly solicits or receives
- from another person (AZH)
- any benefit
- as an inducement or reward
- on account of showing favour to any person (AZH)
- in relation to the affairs or business of the agent's principal.

An agent is defined in s 249A of the Crimes Act to include any person employed by any other person. For the purposes of s 249B, Mr Soliman is the agent of RMS.

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that Mr Soliman's conduct could constitute or involve an offence under s 249B(1) of the Crimes Act of corruptly soliciting and receiving benefits as an inducement or reward for showing favour to AZH, in relation to the affairs or business of RMS.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the

criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman had committed an offence under s 249B(1) of the Crimes Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied that this is serious corrupt conduct for the purposes of s 74BA of the ICAC Act. The conduct took place over a significant period of time, between June 2017 and August 2018, and involved over \$175,000; being a significant amount of money. Mr Soliman was clearly motivated by greed and self-interest. As the manager of the HVP Unit, he held a position of trust within RMS and his conduct involved a significant breach of that trust and could impair public confidence in public administration. If proved on admissible evidence and accepted by a court, there are grounds on which Mr Soliman's conduct could involve an offence punishable by imprisonment for seven years.

## Mr Hamidi

### (i) The 14 contracts

In 2017 and 2018, Mr Hamidi submitted invoices to RMS in relation to the following contracts:

- January 2017 contract for a scoping study and trial of the IMC thermal camera, for which AZH was paid \$31,900 by RMS
- January 2017 contract for a field trial and scoping study of the SICK dimension scanner, for which AZH was paid \$31,900 by RMS
- January 2017 contract for a field trial and scoping study for the TIRTL and Optris thermal scanner, for which AZH was paid \$33,000 by RMS
- January 2017 contract for a field trial and scoping study for the TIRTL and LTI dimension scanner, for which AZH was paid \$33,000 by RMS
- January 2017 contract for a field trial and scoping study for integration of the TIRTL and WIM, for which AZH was paid \$30,800 by RMS
- April 2017 contract for trial and scoping study for Houston Radar technology, for which AZH was paid \$33,000 by RMS
- April 2017 contract for a two-phase report on heavy vehicle crash analysis, for which AZH was paid \$66,000 by RMS
- May 2017 contract for field trials and scoping study for thermal and cold cameras, for which AZH was paid \$99,000 by RMS

- July 2017 contract for trial of HAENNI portable scales, for which AZH was paid \$53,625 by RMS
- August 2017 contract for trial of PAT 10C III portable scales, for which AZH was paid \$53,625 by RMS
- December 2017 contract for trial and study of modern portable scales, for which AZH was paid \$241,175 by RMS
- March 2018 contract for in-ground thermal camera trial and study, for which AZH was paid \$179,259 by RMS
- June 2018 contract for modernising ITS field trials and study, for which AZH was paid \$230,890 by RMS
- August 2018 contract for trial and study of heavy vehicle avoidance, for which AZH was paid \$195,690 by RMS.

In each case, Mr Hamidi knew that, when he submitted the invoices, he had not done, or would not do, most of the work for which he invoiced, and that Mr Soliman would use his position at RMS to dishonestly arrange for payment of the invoices.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act because it adversely affected the impartial and honest exercise of Mr Soliman's public official functions.

Mr Hamidi's conduct also comes within s 9(1)(a) of the ICAC Act as it could constitute or involve a criminal offence of fraud under s 192E of the Crimes Act.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hamidi had committed offences of fraud under s 192E of the Crimes Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

For the purposes of s 74BA of the ICAC Act, the Commission is satisfied that Mr Hamidi's conduct is serious corrupt conduct. It involved his knowing participation in a deliberate and dishonest scheme to obtain at least \$1.3 million, being a significant amount of public money, under false pretences. Mr Hamidi knew that the scheme he was participating in with Mr Soliman was wrong and that Mr Soliman could lose his job if it were discovered, but he agreed to submit false documents to RMS to obtain a profit for himself and his friend. The conduct was premeditated and involved a significant

degree of planning and deceit. Each field trial and scoping study project for which AZH was paid could involve an offence pursuant to s 192E of the Crimes Act, which has a maximum penalty of 10 years imprisonment, meaning it is a serious indictable offence.

## (ii) The PSC panel

In agreement with Mr Soliman, Mr Hamidi lodged a tender submission with RMS for inclusion on the PSC panel, knowing that Mr Soliman had drafted AZH's submission and that he had used, and would continue to use, his position to favour AZH's appointment to the PSC panel.

This is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act because Mr Hamidi's conduct adversely affected the honest and impartial exercise of official functions by Mr Soliman.

Mr Hamidi's conduct also comes within s 9(1)(a) of the ICAC Act as it could constitute or involve a criminal offence of aiding and abetting misconduct in public office by Mr Soliman.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hamidi had committed an offence of aiding and abetting misconduct in public office by Mr Soliman. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied that Mr Hamidi's conduct is serious corrupt conduct. It was deliberate, dishonest and motivated by greed. Mr Hamidi knew when he lodged AZH's submission for inclusion on the PSC panel that he lacked the requisite skills and experience and had not done, and would not do, any of the work required of a panel contractor. His conduct involved aiding and abetting a public official to misconduct himself in relation to his official functions to ensure that AZH would be a winning tenderer on a panel that was intended to achieve competitive pricing and cost efficiencies for RMS. Mr Hamidi knew, and intended when he lodged AZH's submission, that his appointment to the panel would result in lucrative contracts for AZH for which RMS would expend significant sums of public money for nothing in return.

## (iii) Payments to Mr Soliman

Between 4 June 2017 and 9 August 2018, Mr Hamidi paid Mr Soliman \$177,450 in 13 payments as an inducement or reward for Mr Soliman exercising his official functions to favour AZH and award it multiple RMS contracts.



This conduct is corrupt conduct because it could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Soliman's official functions and therefore comes within s 8(1)(a) of the ICAC Act.

For the purpose of s 9(1)(a) of the ICAC Act, s 249B(2) of the Crimes Act is relevant and provides:

- (2) *If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit—*
- (a) *as an inducement or reward for or otherwise on account of the agent's—*
- (i) *doing or not doing something, or having done or not having done something, or*
- (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
- in relation to the affairs or business of the agent's principal, or*
- (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*
- the firstmentioned person is liable to imprisonment for 7 years.*

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that Mr Hamidi's conduct could constitute or involve a criminal offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of corruptly giving a benefit to Mr Soliman as an inducement or reward for Mr Soliman showing favour to AZH in relation to the affairs or business of RMS, or the receipt, or expectation, of which would tend to influence Mr Soliman to show favour to AZH in relation to the affairs or business of the RMS.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hamidi committed a criminal offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied, for the purpose of s 74BA of the ICAC Act, that this is serious corrupt conduct because the payments were made to Mr Soliman as a reward for awarding RMS work to AZH and with the

intention of influencing Mr Soliman, a public official, to continue to use his position at RMS to favour Mr Hamidi's company in its dealings with RMS. If proved on admissible evidence, a court could be satisfied to the criminal standard that Mr Hamidi's conduct could involve an offence punishable by imprisonment for seven years.

## Mr Singh

Mr Singh improperly assisted AZH to be appointed to the PSC panel by recommending AZH's appointment, knowing that its tender submission contained false and misleading information about the experience and technical skill of AZH and Mr Hamidi, and by deliberately failing to declare his conflict of interest arising from his friendship with Mr Hamidi.

This conduct is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act because it is conduct that involves the partial and dishonest exercise of his official functions.

The Commission is satisfied that, for the purpose of s 9(1)(c) of the ICAC Act, Mr Singh's conduct constitutes or involves reasonable grounds for dismissing or otherwise terminating his services. His conduct involved substantial breaches of the applicable RMS code of conduct and conflict of interest policy, including the requirements for employees to ensure that there is no actual or perceived conflict between their personal interests and those of RMS and that employees disclose any conflict of interest. His conduct would also amount to a breach of the procurement policy requirement to assess tenders on their true merits. Mr Singh had undertaken relevant code of conduct training.

The Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Singh had engaged in conduct that constitutes or involves reasonable grounds for Mr Singh's dismissal as a public official. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied that Mr Singh's conduct is serious corrupt conduct for the purposes of s 74BA of the ICAC Act. His conduct is serious from a disciplinary perspective. He was the convenor of the PSC panel TEC, which was a position of trust. He declared that he had no conflict of interest when he had a clear conflict, given his close friendship with one of the tenderers, whose submission he evaluated and preferred, despite his knowledge that his friend lacked the requisite ITS experience and qualifications to perform the work required for the contracts that would be awarded.

That appointment in fact led to four contracts to the value of over \$850,000 being awarded in less than a year to AZH. Mr Singh was motivated by his friendship with Mr Hamidi to make certain assumptions about how Mr Hamidi could have been capable of producing the reports accompanying AZH's tender submission, and he turned a blind eye to the truth of the assertions in AZH's submissions in order to favour his friend. This was a serious failure to exercise his official functions in the public interest of obtaining the most appropriate contractors and the best value for money for RMS.

## Section 74A(2) statements

The Commission is satisfied that Mr Soliman, Mr Hamidi and Mr Singh are "affected" persons for the purpose of s 74A(2) of the ICAC Act.

### Samer Soliman

Mr Soliman's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including:

- RMS records
- financial records of AZH
- items seized from Mr Soliman's home during the execution of a search warrant by the Commission (including Mr Soliman's mobile telephone on which a list of payments from Mr Hamidi was located)
- items secured at Mr Soliman's RMS workstation (including a USB containing AZH records and documents located nowhere else)
- documents and a USB provided to the Commission by Mr Hamidi
- Mr Hamidi's independently created ledger of payments to Mr Soliman
- evidence of the genuine vendors at IMC and SICK, whose work had been provided to Mr Soliman and passed off by him as AZH's
- evidence of witnesses to Mr Soliman's attendance during the tender evaluation for the PSC panel.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Soliman for:

- offences of fraud pursuant to s 192E of the Crimes Act

- the offence of aiding and abetting Mr Hamidi in the commission of fraud offences pursuant to s 192E of the Crimes Act
- the common law offence of misconduct in public office, arising from his conduct in using his position at RMS to award 14 contracts (totalling over \$1.3 million) to AZH, and dishonestly to approve and cause payment by RMS of invoices submitted by AZH for those contracts, which he knew to be false
- the common law offence of misconduct in public office, arising from his conduct between September and November 2017 in partially and dishonestly involving himself in the tender process for the PSC panel, and drafting AZH's tender submission, for the purpose of ensuring that AZH was a winning tenderer and was appointed to that panel
- the offence of corruptly soliciting and receiving benefits pursuant to s 249B(1) of the Crimes Act, between 4 June 2017 and 9 August 2018, in the total amount of \$177,450
- an offence pursuant to s 87 of the ICAC Act for giving false or misleading evidence to the effect that he only made "formatting changes" to reports submitted by AZH.

The Commission accepts the submission of Counsel Assisting that Mr Soliman gave false and misleading evidence when he claimed to have made only "formatting" changes to AZH reports, and in particular his attribution of IMC's report to AZH. The Commission is satisfied that the evidence of the vendors, IMC and SICK, whose work was plagiarised and passed off as the work of AZH, and the evidence of the reports attributed to AZH, which were located nowhere else but at Mr Soliman's RMS workstation following the Commission's execution of a search warrant at his home, further support this allegation.

On that basis, the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP in respect of an offence under s 87 of the ICAC Act.

Mr Soliman's employment with RMS was terminated for serious misconduct with effect from 26 February 2019. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal does not arise.

### Ali Hamidi

Mr Hamidi's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation

to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including:

- RMS records indicating that the majority of the work for which AZH was paid was never submitted to RMS
- financial records of AZH
- items seized from Mr Soliman's home during the execution of a search warrant by the Commission (including Mr Soliman's mobile telephone on which a list of payments from Mr Hamidi was located)
- items secured at Mr Soliman's RMS workstation (including a USB containing AZH records and documents located nowhere else)
- evidence of the genuine vendors at IMC and SICK, whose work was passed off as AZH's
- AZH's false and misleading PSC panel tender submission, attaching the plagiarised reports
- evidence of witnesses at the only three trials attended by Mr Hamidi.

As set out in the chapter 1, through his lawyer, Mr Hamidi voluntarily approached the Commission and cooperated extensively with the Commission, producing documents and making admissions. However, Mr Hamidi's conduct as found by the Commission was very serious, hence the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hamidi for:

- offences of fraud pursuant to s 192E of the Crimes Act
- the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office, in relation to Mr Soliman's conduct in using his position at RMS to award 14 contracts (totalling over \$1.3 million) to AZH and to dishonestly approve and cause payment by RMS of invoices submitted by AZH in relation to those contracts, which he knew to be false
- the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office, in relation to Mr Soliman's conduct between September and November 2017 in partially and dishonestly involving himself in the tender process for the PSC panel, and drafting AZH's tender submission, for the purpose of ensuring that AZH was a winning tenderer and was appointed to that panel

- the offence of corruptly giving a benefit to Mr Soliman as an inducement or reward, pursuant to s 249B(2) of the Crimes Act.

## Jainesh (Jai) Singh

Mr Singh's employment with RMS was terminated with effect from 16 May 2019. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

## Chapter 8: Novation's exorbitant mark-up and invoicing for "random" parts

Between late November 2016 and the end of the 2016–17 financial year, Novation was paid over \$800,000 for the purported supply of IRD portable weigh scale spare parts.

This chapter examines those payments and looks at the evidence revealed in hundreds of WhatsApp messages between Mr Thammiah and Mr Soliman between 24 May 2017 and 6 July 2018, of Mr Soliman's attempts to eliminate Novation's competitors, of his efforts to secure the renewal of Novation's exclusive NSW distributorship of IRD products, and of his plans to secure even more lucrative revenue streams for the company that the messages clearly indicate he considered as much his own as Mr Thammiah's.

### Spare parts invoicing

#### Accuweigh has the maintenance contract

On 23 November 2016, IRD appointed Novation as its exclusive NSW distributor of PAT/SAW equipment and related accessories. This was in large part due to Mr Soliman's machinations in undermining the previous distributor and maintainer of IRD products, ELWC, and promoting Novation to IRD as RMS's preferred vendor.

Securing the distributorship of IRD products, however, did not mean that Novation could also service, maintain and undertake the yearly certification of RMS's portable weigh scale fleet as the previous distributor, ELWC, had been able to do. Mr Soliman urgently needed to find a contractor able to provide the maintenance services that Novation was manifestly incapable of providing. Mr Soliman's solution was to award a short-term maintenance contract to Accuweigh, a Melbourne-based company. Mr Soliman dealt with Mr Mitchell, then branch manager of Accuweigh's Newcastle office.

On or around 7 November 2016, Mr Mitchell sought to procure some spare parts for PAT/SAW 10A scales and obtain a parts catalogue from IRD. Mr Soliman had been

made aware of this and quickly let Mr Mitchell know that any spare parts required for maintenance would be procured by RMS. Earlier that day, Mr Soliman had emailed Mr Mitchell, asking:

*While im waiting for a parts list from IRD, can you pls give me a list (if available) on what parts you would like me to order you for 12 months of maintenance?*

Mr Mitchell responded:

*This is a hard one.*

*If I look at faults with current machines and average them out. Need approx. of the following*

- 1. 200 x bearings*
- 2. 12 x base plates*
- 3. 10 x main boards*

*This should get us by to start with. Does the supplier have a specific parts list they recommend.*

#### Novation's quote 100

On 11 November 2016, Mr Soliman sent Mr Thammiah an email, telling him, "if IRD dont have a price list by Monday, just order these for the mean time and request express freight". He directed Mr Thammiah to order the required spare parts required by Mr Mitchell. Novation was not formally appointed the exclusive NSW distributor of IRD products until 23 November 2016.

On 16 November 2016, Mr Thammiah sent Novation's quote numbered "100" to Mr Singh, copying Mr Soliman. The quote was in fact a price list, including freight costs, for the procurement of a number of models of SAW 10A series III scales, even though, at this time, the only scales requiring repair in the RMS fleet were the series I and II scales – the series III being new and still under warranty.



On 21 November 2016, in response to Mr Soliman's request, Mr Mitchell sent him a list of the spare parts required for the repair of the series I and II scales. Mr Soliman forwarded this list to Mr Thammiah.

On 22 November 2016, a PO (4200004950) was raised in Novation's favour for "reactive maintenance of RMS enforcement portable weigh scales" in the sum of \$242,000, based on Novation's quote 100. Mr Singh signed the PO, as the requesting officer, while Mr Soliman signed as the officer approving the order.

### **Novation's quote 101 – adding a zero to IRD's prices**

On 17 November 2016, Mr Soliman sent Mr Thammiah an email attaching ELWC's pricing for parts. He said in his email "lets compare with IRD's costs when you get them". On 28 November 2016, Mr Thammiah sent two emails to Mr Soliman's personal email address attaching a number of documents including IRD's price lists for the SAW 10A series I and II spare parts packages. Just over an hour later, Mr Soliman sent Mr Thammiah an incomplete draft of Novation's quote numbered "101" for portable weigh scales parts from his personal email address. The email subject line was "parts list – in progress". The draft quote contained pricing for the parts packages for the SAW 10A series I and a heading for the SAW 10A series II parts packages pricing, with space left for the insertion of the relevant pricing information.

A comparison between IRD's pricing for SAW 10A series I spare parts, and Novation's pricing for the same spare parts in the draft quote, indicates that Novation's \$AUS prices were more often than not created simply by adding a zero to IRD's \$USD prices. For example, where IRD had quoted US\$853, Novation's price was AUS\$8,530. This pattern was repeated for seven out of the eight products listed. In addition, where the IRD price list had advised that a battery pack of six NiCad batteries could be sourced locally, Novation's price list quoted \$600 for

a product which the evidence indicates was a set of six AA batteries available almost anywhere for a fraction of that cost.

On 1 December 2016, Mr Thammiah emailed Mr Singh a final version of Novation's quote 101, blind-carbon-copying Mr Soliman. On 16 January 2017, Mr Soliman approved the raising of a PO for \$242,000 (4200006046), based on Novation's quote 101. Mr Singh sent the necessary paperwork to TSS, describing the PO as follows:

*This is a blanket purchase order to cover REACTIVE operational maintenance of RMS enforcement portable weigh scale fleet until the end of this financial year from the sole provider of this hardware. There will be several small invoices charged to this shopping cart as spare parts for maintenance are required.*

### **Weighpack wins the maintenance and certification contract**

In August 2016, while Mr Mitchell was still employed at Accuweigh, he registered a new company, Weighpack and Electrical Pty Ltd ("Weighpack"), and was appointed one of its directors. Weighpack's business was the maintenance of industrial weighing equipment and the company was based in Newcastle.

On 12 December 2016, Mr Soliman issued an RFQ to Accuweigh, where Mr Mitchell was still employed, and to Mr Mitchell's new company, Weighpack, for the annual routine servicing, repairs, calibration and certification of all RMS's PAT portable weigh scales. The RMS procurement manual, in effect at the relevant time, provided that an RFQ was a suitable method of seeking competitive quotes from suppliers on a panel or prequalification scheme. It also allowed for use in situations where the contract value was less than \$250,000, provided that the RFQ manager was able to "identify suitable suppliers to ensure competitive quotes".

In an email dated 12 September 2016 to members of his team, Mr Soliman had indicated his own understanding of the applicable RMS procurement rules then in place:

*We must from now on include 3 quotes for all work over \$30k (\$50k for civil work). Yes I know this is annoying and takes up a lot of time ... but it must be done from now on for me to approve. There will be special cases with niche works where only 1 vendor has the skill sets/knowledge which I will go through on a case by case basis.*

*I'll chat to you more on Wednesday but FYI I won't be approving any more PO's/shopping carts without the appropriate documentation etc so as to cover everyone's butts if we have an audit—we must adopt the proper RMS procurement rules where reasonably practical.*

Notwithstanding Mr Soliman's insistence that others adhere to the rules, the evidence indicates that he issued the RFQ for scale maintenance to two companies only: Accuweigh and Weighpack.

Significantly, the RFQ issued by Mr Soliman specifically provided that, "RMS will provide all spare parts required for maintenance upon request from the contractor".

Mr Jones told the Commission he could not understand why the entity servicing, maintaining, recalibrating and repairing the scales would not also be supplying the parts necessary for those functions. Mr Jones said he spoke to Mr Singh about this, and Mr Singh responded to the effect that the HVP Unit wanted to keep an eye on what was being purchased and did not want the service provider to mark-up the cost of the parts.

On 19 December 2016, Accuweigh submitted its response to Mr Soliman's RFQ. The day after, on 20 December 2016, Mr Mitchell left his employment at Accuweigh and submitted a quote to Mr Soliman on behalf of his own company, Weighpack. This was the day *after* the RFQ's stated closing date. Weighpack's price was considerably lower than Accuweigh's. Mr Mitchell gave evidence that he did not remember Mr Soliman telling him about Accuweigh's submission in response to the RFQ, but he agreed that he had been aware of and had undercut Accuweigh's quoted price when he submitted the quote by Weighpack.

On 22 December 2016, Mr Soliman wrote to Accuweigh advising it had been unsuccessful in its tender for the maintenance contract. He advised that "there were other submissions which were lower cost and RMS policy requires us to select these lower cost options". As a result, he requested that Accuweigh concluded its business maintaining RMS portable weigh scales no later than 1 February 2017.

On 9 January 2017, Mr Soliman emailed IRD and advised the following:

*We have concluded a tender for interim maintenance for the portable weigh scales fleet. Accuweigh will not be maintaining scales anymore. So this removes any potential conflict of interest with accuweigh maintaining a competitors scales.*

*A new vendor called weighpack electrical pty ltd are the winners of the tender. They are electricians and do not sell any scales etc nor are they interested in doing so, so we can now move forward with providing them with all required information for maintenance of all series of IRD scales.*

On 12 January 2017, Mr Soliman emailed Mr Singh, instructing:

*3 quotes attached.*

*winning tenderer is WeighPack Electrical.*

*Please create a PO using [sic].*

The three quotes attached to Mr Soliman's email were Accuweigh's and Weighpack's submissions in response to the RFQ issued on 12 December 2016 and Novation's quote numbered "99", dated 17 October 2016, some two months before the RFQ was even issued. Novation's quote purported to be for the maintenance of IRD PAT scales and its price was much higher per scale than Accuweigh's and Weighpack's. Novation's quote had not been created or submitted in response to the RFQ, but had been provided to Mr Soliman around the time ELWC ceased its relationship with RMS and Mr Soliman had been scrambling to find a replacement maintainer.

Accuweigh later mounted a successful legal challenge against the appointment of Weighpack as the winning tenderer for this contract. As a consequence, the servicing arrangement had to be returned to Accuweigh in late 2017.

## Novation's quote 102

On 16 January 2017, Mr Soliman authorised the request for a further PO to be raised in Novation's favour for "portable scales reactive maintenance software and assets". Novation's quote numbered "102", which was the basis for this further PO, was submitted to Mr Soliman two days *after* he signed the request. The items in Novation's quote 102 primarily consisted of hardware and software for the SAW 10C III dynamic portable weigh scale. A PO in the amount of \$117,480 (4200006078) was raised on 20 January 2017, based on Novation's quote 102.

The evidence available to the Commission indicates that the SAW 10C III dynamic scale was not a model or type

of scale then or later in use by RMS and Novation's quote was therefore not for equipment that was required for the repair or maintenance of the existing portable scale fleet.

As discussed in chapter 5 of this report, in August 2017, AZH was paid for a trial of the SAW 10C III scale that the Commission is satisfied it did not conduct. As discussed in chapter 6, in December 2017, AZH was again paid for a trial of three portable weigh scale models, including the SAW 10C III scale, which the Commission is also satisfied did not occur. The evidence indicates that it was Mr Jones and his inspectors who conducted the trial of four SAW 10C III dynamic scales for approximately six months from August 2017. The trial was unsuccessful because of problems with the scale software and the dynamic scales were returned to Novation.

By 20 January 2017, three POs, totalling just over \$600,000, had been raised in Novation's favour for the supply of spare parts and software purportedly required for the reactive maintenance of RMS's fleet of portable weigh scales. Two of these POs were based on Novation quotes that bore no relation to the parts needed to repair the SAW10A series I and II scales.

### Novation's orders from IRD

On 16 January 2017, Mr Soliman told the various sector and operations managers that funds had been allocated, spare parts had been ordered, and that these were likely to arrive in approximately March. By 19 January 2017, Mr Thammiah had placed just two orders for spare parts from IRD, to the total value of US\$21,162 (including shipping). The two orders placed by Novation were for the items Mr Mitchell had advised Mr Soliman he would need in his email of 21 November 2016. Novation ordered double and sometimes more of the quantities Mr Mitchell had requested. The evidence indicates a further order was placed on 25 January 2017 by Mr Thammiah with IRD for a connecting cable and software required to calibrate the new SAW 10A series III scales.

The items Mr Mitchell had requested, and that Mr Thammiah ordered, were mainly minor items such as ball bearings, ball sockets, shim rings, circlips, studs and plastic handlebars.

Mr Mitchell gave evidence to the Commission that, when he did the scales maintenance work for RMS, at both Accuweigh and Weighpack, he provided RMS with a spreadsheet of the spare parts he estimated would be required over the next 12 months. In November 2016, his estimate was that he would need 200 bearings, 12 baseplates and 10 main boards.

Mr Mitchell told the Commission that, when he took over the scale servicing in February 2017, he needed more inventory and this was mainly minor items, such

as springs, ball bearings, washers and threads, as well as more aluminium baseboards. He said he told RMS what he needed and was told it would be sorted out for him. He said he did not think too much about this arrangement because some companies procured parts themselves to avoid the service contractor applying a mark-up. He said the parts just turned up at his office.

### Novation submits multiple invoices to RMS

Despite the relatively small orders that Mr Thammiah had, by then, placed with IRD, between 10 January and 29 March 2017, he submitted the following 21 invoices to RMS, totalling just under \$632,000:

- 10 January 2017 – invoice 101-01
- 13 January 2017 – invoice 101-02
- 25 January 2017 – invoice 101-03
- 17 March 2017 – 3 invoices, numbered 101-04, 101-05, 102-01
- 20 March 2017 – 3 invoices, numbered 101-06, 101-07, 102-02
- 21 March 2017 – 3 invoices, numbered 102-03, 101-08, 101-09
- 22 March 2017 – 3 invoices, numbered 101-10, 101-11, 102-04
- 23 March 2017 – 3 invoices, numbered 101-12, 101-13, 101-14
- 29 March 2017 – 3 invoices, numbered 101-15, 101-16, 102-05.

All the invoices were under, and most only just under, \$30,000 (excluding GST). Between 17 and 23 March 2017, in just five business days alone, Mr Thammiah submitted 15 separate invoices worth a total of just over \$480,000.

On 29 March 2017, Mr Soliman sent an email to Mr Thammiah from his personal email address, with the subject line "remaining funds". The body of the email bears setting out in full:

#### **Existing PO's:**

- 1) PO 4200004950: \$20k exc GST remaining
- 2) PO 4200006046: \$17k exc GST remaining
- 3) PO 4200006078: \$17k exc GST remaining

**ACTION on steve:** create 3 invoices to charge random **PARTS** to each of these PO's to use up the remaining funds.

***ACTION on RMS: open a NEW ~\$190k PO for:***

- 1) 2 new sets dynamic scales*
- 2) chargers*
- 3) software + cable.*

Later that day, within the space of four minutes, Mr Thammiah submitted three invoices for \$19,800, \$16,910 and \$16,900, which neatly used up the remaining funds in each of the spare parts POs raised in Novation's favour, as Mr Soliman had instructed. The "random" parts for which Mr Thammiah invoiced included 12 battery packs for \$7,200, two steel baseboards with coupling hardware for \$17,060 and one SAW 15C series III scale for \$9,950. As discussed below, battery packs, steel baseboards and SAW 15C III scales were items which Mr Thammiah never ordered from IRD, and which IRD never delivered.

On 29 March 2017, Mr Soliman signed to approve the request for yet another PO to be raised in Novation's favour for the sum of \$190,000 (excluding GST), based on Novation's quote 101. On 6 April 2017, a PO for \$209,000 was raised (4200007447). There is no evidence available to the Commission of the need for any further parts to necessitate this new PO.

On 11 April 2017, Mr Soliman emailed Mr Thammiah to notify him that a new PO had been created and to advise him that it was for:

- 1) calibration software*
- 2) charging cables*
- 3) chargers*
- 4) 2 sets of 10CIII dynamic scale sets.*

None of these items was included in the price list in Novation's quote 101, on which the PO was purportedly based.

On 15 May 2017, Mr Thammiah submitted four invoices (103-01, 103-02, 103-03 and 103-04), and the next day, another three invoices (103-05, 103-06 and 103-07), totalling just under \$204,000. The invoices that used up this PO were for a range of apparently random spare parts and software for static and dynamic scales.

Between 10 January and 16 May 2017, therefore, Novation had submitted 28 discrete invoices, all for under \$30,000, against four separate POs, for the total amount of just under \$836,000.

**IRD did not supply items for which Novation invoiced RMS**

Remittance advices provided to the Commission by RMS indicate that in the period between 17 February and 31 May 2017, RMS paid Novation a total of \$803,143 for 27 invoices. For some reason, invoice number "102-04" appears not to have been paid.

Records provided to the Commission by IRD indicate that, by the end of the 2016–17 financial year, Novation ordered parts from IRD to the value of just over US\$53,000. Contemporaneous financial records for Novation's bank account enable a reconciliation of the amounts paid by Mr Thammiah to IRD in Australian dollars, and indicate that these orders totalled approximately AUS\$75,000.

The Commission obtained the invoices sent to Mr Thammiah by IRD, itemising those products Novation ordered. There is no evidence available to the Commission to suggest that Novation ordered items from IRD other than, or additional to, those listed in IRD's invoices.

In the course of the public inquiry, the Commission enquired of IRD whether the items, and the quantities for which Novation had invoiced RMS between January and May 2017, had in fact been supplied by IRD. The responses provided by IRD indicate significant discrepancies between the items and quantities for which Novation invoiced RMS and the items and quantities IRD indicated that it had supplied to Novation.

Novation's invoices to RMS indicate that, between January and May 2017, it charged RMS for the items and quantities in table 1 on page 101.

IRD advised the Commission that it did not supply any of the parts or scales in table 1 to Novation during that period. IRD confirmed that it *never* supplied Novation with steel baseboards, battery packs or SAW 15C III scales. IRD confirmed that it later supplied eight weighpad platform boards, 42 complete electronics covers and 25 battery compartment covers to Novation, but that these items were only ordered by Novation in February 2018 and were not shipped until April 2018. The Commission accepts this advice. In any event, the evidence indicates that Novation invoiced RMS and was paid for these items in early 2018, as discussed in chapter 9.

Mr Jones was taken through the items for which Novation invoiced RMS between January and May 2017 and gave the following evidence consistent with the information provided by IRD about the scale parts it did and did not supply:

- the steel baseboard is a minor fitting at the end of the aluminium baseboard, which "never gave any trouble" and he had never had to replace one



**Table 1: Invoices from Novation to RMS, from January to May 2017**

Part	Number	Cost per part
SAW 10A series I steel baseboards right and left with coupling hardware	16	\$8,530
SAW 10A series I weighpad platform board	1	\$2,780
SAW 10A series I battery pack	44	\$660
SAW 10A series I complete electronics cover	52	\$1,150
SAW 10A series I battery compartment cover	9	\$440
SAW 15C series III dynamic scale	5 No evidence of payment of 1 x SAW 15C series III dynamic scale	\$9,950

- the weighpad platform board rarely gave any problems and for the price Novation invoiced for one, RMS could have bought two new scales
- the SAW 10As (I, II and III) have six single AA batteries, normal or rechargeable, which could be bought “at Woolies or Bunnings”
- the complete electronics cover is a plastic cover in a metal component with a rubber seal to keep the water out and four screws to hold it in place; he has never had to replace one and 52 seemed “extremely excessive” to him
- the battery compartment, into which six AA batteries would slide, would rarely, if ever, need replacing and would cost \$15 at the most; rather than the \$440 for which Novation invoiced
- the SAW 15C III dynamic system was not a scale he had ever used or heard of being supplied or used by anyone in RMS.

The total value of the items for which Novation invoiced RMS, but which the evidence indicates were not ordered from, or supplied by IRD, at the relevant time, amounts to over \$297,000. The evidence establishes that, excluding the amount in invoice 102-04 for one SAW 15C III dynamic scale (which does not appear to have been paid), Novation was paid approximately \$287,000 against these false invoices.

### Novation hides its costs from the customer

On 17 March 2017, Mr Thammiah emailed IRD to provide the address for delivery of the items he had so far ordered. He gave Weighpack’s Newcastle address. He wrote, “As always please sure [sic] there are no invoices included in the shipping, just an inventory of goods delivered”.

It was ultimately arranged that IRD would send the items ordered together with the IRD invoice but that Mr Thammiah would remove the IRD invoice and substitute the Novation invoice. This was done so as to help disguise Novation’s substantial mark-up in prices.

### What did Weighpack get?

Mr Mitchell was taken through the items and quantities for which Novation invoiced RMS between January and May 2017. He said he never received steel baseboards and never got a full weighpad platform board. He said that, given he had only ever replaced a couple of electronic covers, the 52 of them for which Novation had invoiced RMS far exceeded what would have been required. Mr Mitchell told the Commission that the batteries used for the 10A series I scales were AA batteries available locally and that he bought the rechargeable ones and charged RMS for the cost of them. He said that the majority of the scales he saw were the series I and II. Mr Mitchell said he never saw any dynamic scales, nor any access and levelling ramps for series III scales, had never heard of an alignment flex frame, and made his own cable in order to calibrate the scales.

Mr Mitchell confirmed that, between February and August 2017, he received four packing lists that record the entirety of the spare parts that he received during the period in which Weighpack held the maintenance contract. The four packing lists were sent to Mr Soliman, as he had requested. The first two packing lists, shipped on 31 January 2017, do not indicate unit price. The last two packing lists, shipped on 14 March 2017, do indicate unit price and the total amount Novation was charged by IRD, including freight and insurance. Careful comparison indicates that the last two packing lists are merely repeat orders of every item in the first two packing orders.

The four packing lists also indicate that most of the items delivered – namely washers, ball sockets, ball bearings, screws and nuts – were small, minor and low cost, and that relatively expensive items, such as a battery charging kit for US\$820, which was the most expensive item on any packing list, were ordered rarely and in low quantities. The items on the packing lists also indicate very little correlation with the items for which Novation invoiced RMS between January and May 2017.

The evidence indicates that Mr Mitchell received the software for the SAW 10A series III static scale on or around 13 March 2017, and that a charger and input cables were at least ordered for him by Novation on or around 29 March 2017. The amount of these additional items, as charged by IRD to Novation, was just over US\$10,000.

The evidence provided by the four packing lists and the corresponding IRD invoices, as well as four additional IRD invoices for calibration software and cables, indicates that during the period in which Weighpack held the maintenance contract (between February and August 2017), the price of the spare parts delivered to Weighpack by IRD, including freight and insurance, as ordered and paid for by Novation, amounted to just over US\$53,000.

IRD records indicate, however, that Novation had ordered and paid IRD for just under US\$110,000 worth of items by 25 September 2017. The IRD invoices that make up the remaining approximately US\$57,000 worth of items that Novation apparently paid for, indicate multiple orders for dynamic scale software, four SAW 10C III dynamic scales, and plastic grids for SAW 10D systems. The evidence available to the Commission indicates that these were not items required for the maintenance of the SAW10A series I and II static scales in the RMS fleet, nor did they relate to scales or systems then being used by RMS. In any event, the evidence indicates that most of these items were in fact returned; the invoices were reversed on 29 March 2018 and the money returned to Novation.

### The maintenance contract comes up again

On 16 August 2017, IRD renewed its arrangement with Novation, appointing that company as its exclusive distributor of SAW equipment and accessories in NSW until 1 March 2018.

On 25 August 2017, Mr Singh, at Mr Soliman's request, issued an RFQ for the maintenance, verification and repair of the RMS fleet of portable weigh scales for the 2017–18 financial year. The scope of works in this RFQ, unlike the previous one, required the contractor to source parts from the relevant portable weigh scales manufacturing distributor, with any costs associated with spare parts

over the value of \$50 required to receive written approval from RMS prior to incurring the costs. The RFQ contained a list of all of the parts in the SAW 10A series I and II scales that could require labour to replace, and noted that the SAW 10A series III (still under warranty) and HAENNI scales would not require parts.

On 12 September 2017, Mr Singh advised his RMS colleagues that "due to unforeseen circumstances" the outcome of the RFQ process had been delayed. Evidence available to the Commission indicates that this delay was most likely due to Accuweigh's legal challenge of Weighpack's selection as the winning tenderer in the previous RFQ process in December 2016.

By 28 September 2017, with the RFQ process still incomplete, RMS had nobody to maintain the scales that were failing at an alarming rate. The inspectors and operations manager were concerned and calling for Mr Soliman to find an immediate contingency plan.

Mr Soliman responded to these concerns as follows:

*Currently, weighpack and accuweigh are the only 2 vendors certified/interested for the PAT scale verification, hence why RMS is now in a bad position.*

*All that we can do is go to open tender to seek any other unknown vendors that can perform these services, which is what we are currently doing. An open-tender for HV maintenance services (including scales maintenance) went out on the e-tender site this week.*

The open tender for maintenance services to which Mr Soliman referred, the HVM panel, is the subject of chapter 9.

### The WhatsApp evidence

A significant number of WhatsApp messages between Mr Thammiah and Mr Soliman illuminate their scheme to exploit Novation's sole distributorship of IRD's products to earn a significant profit from RMS for the supply of spare parts, to eliminate competition, and to create further opportunities for Novation to profit from the "scales business" at RMS's expense.

The messages illustrate unambiguously that this was a scheme between Mr Soliman and Mr Thammiah, which involved the equal sharing between them of Novation's profits. It is clear from these messages that Mr Soliman was manipulating the ordering of spare parts from inside RMS and that he was also directing and sometimes cajoling Mr Thammiah quite insistently about what he needed to do to secure the all-important exclusive NSW distributorship from IRD for Novation; without which, there would be no revenue stream for either of them.

## “we have competition”

On 30 May 2017, Mr Soliman sent Mr Thammiah the following messages on WhatsApp:

*FYI accuweigh is trying to win the sole vendor licence from IRD*

*Rish [Malhotra] asked me if we can meet with accuweigh too when hes down here in august ... i said no.*

*But just be aware ... we have competition.*

On 6 June 2017, Mr Soliman told Mr Thammiah:

*Rish wants to sign with weighpack*

*Did u call him about the sole vendor licence?*

*Rish is obviously looking for an out from novation. First accuweigh then weighpack ...*

*Up to you now if were gonna keep this contract. I cant do anything.*

On 8 June 2017, Mr Soliman confirmed their “story” for Mr Malhotra of IRD:

*To confirm. So we have the same story for rish. Ive places orders for parts with novation for the coming financial year. Novation will place orders to IRD in a few months. Also im going to mention that there is very little funding for new scales foe the coming FY, so changing distributors has little benefit to me except that it disrupts my business ... U just gotta get that sole vendor license by august when he comes.*

*Remember i cant open large PO's without the license. All i can do is heaps of \$30k pos and that raise alarms.*

By June 2017, Novation had submitted 28 invoices, all for around or under \$30,000 (exluding GST). The messages cited above reveal that Mr Soliman was anxious to impress on Mr Thammiah the importance of securing a renewed sole vendor licence for IRD products by August 2017, raising the spectres of competition and detection if Mr Thammiah failed.

On 27 June 2017, Mr Soliman told Mr Thammiah that, “i think we need to place an order before he gets here in august so he cant change distributors”.

Over the next two days, Novation duly placed three orders worth US\$31,200 with IRD. All three invoices were reversed on 29 March 2018 and the funds returned to Novation, allowing the Commission to conclude that the orders did not originate from a genuine RMS need and were for the illegitimate purpose of making Novation seem a more attractive proposition to IRD.

On 20 July 2017, Mr Soliman asked Mr Thammiah whether he had spoken to Mr Malhotra lately and told him:

*Cant keep switching maintenance vendors*

*I need to tell him to pick 1 sole vendor for procurement and another for maintenance*

*Hes trying to get every vendor to maintain and procure. Doesnt work for me ...*

*I'll make him choose novation for procurement and weighpack for maintenance*

*I want sole vendor licence for both*

*Anyway just checking if u called him so it doesn't look weird*

Approximately 20 minutes later, Mr Soliman told Mr Thammiah that Mr Malhotra had just called and that everything was “sorted”. Mr Malhotra had guaranteed a sole vendor licence for procurement and maintenance for NSW:

*He will renew ours for procurement*

*We're good :)...*

*Rish will update the novation sole vendor licence. All sorted. You'll just need to finalise it when you meet him in a couple weeks.*

Mr Soliman also told Mr Thammiah that Mr Malhotra was going to allow Accuweigh and Weighpack to sell IRD products in states other than NSW:

*...until I work for the NHVR [National Heavy Vehicle Regulator]*

*Then novation goes national*

*Thats the verbal agreement.*

## “\$2M capital should be our goal. Now ... the plan”

On 26 July 2017, a lengthy WhatsApp exchange between Mr Soliman and Mr Thammiah continued a discussion they had had the night before about ideas for a joint business venture beyond “the scales business”. Mr Thammiah was evidently interested in pursuing opportunities in the legal cannabis or medical marijuana market and Mr Soliman told him he wanted to support and work with him. Mr Soliman told Mr Thammiah he had a plan:

*[Mr Soliman]: \$2M capital should be our goal*

*Now ... the plan*

*I think we should focus on the scales business as primary. So, im committed to growing this business here and nationally over the next 6 months. I just need u to meet the managers in each state once I sell the idea*

*The rest of the work is mine to do. For scales. Basically, my goal is to earn \$2M for novation ...*

*Your goal for NEXT financial year is to have the people you want on board ready to go. Just build ur network*

[Mr Thammiah]: *The margins we make wont be anywhere near nsw*

[Mr Soliman]: *Oh they will be if I have my way*

*Remmeber ill soon be leading this program nationally*

[Mr Thammiah]: *Okay but competitive scales make it hard*

[Mr Soliman]: *Yeah still a huge market here*

*Replace all 600 scales*

*Anyway thats my target*

[Mr Thammiah]: *Agreed*

[Mr Soliman]: *In the short term a few things need to happen:*

*1) see tan to get the final balance*

*2) I need a quote from you for the parts so I can start drafting the RFT (REQUEST FOR TENDER). this takes a while so sooner I get the quote the better so I know what the tender value is*

*3) u need to get the sole vendor license from rish asap. We cant raise POs without it.*

*The rest is up to me ... ill make this happen.*

The reference to "tan" and the final balance was a reference to the accountant Mr Thammiah used for

Novation's business. As discussed further below, at that time, because of the expenses involved in building his house, Mr Soliman was anxious to withdraw his half of Novation's profits, after tax, and needed the accountant to determine that amount. As he said later in the exchange on 26 July 2017, "Lets just find the balance from tan. We'll review the balance and im going to clear my half".

On 28 July 2017, Mr Soliman messaged Mr Thammiah and told him:

*Btw I checked all the PO values. Total is about \$1.26M*

*Were in a much better position than we thought. Especially cause u didn't take into consideration that the income (approx. 300k) is an expense to business so we'll pay less business tax ...*

*Btw. The tender for parts will be for a 5 + 2 + 2 term 5 years guaranteed with the option for 4 more*

*I will specify that the tenderers must have a licence from IRD for NSW procurement*

*Which essentially just leaves novation*

*Im goin for the real substantial contracts*

*These multiple 200k contracts dobt get us where we need to be fast enough...*

*Ill be the tender selection panel. So ... really all we need to bank on is u getting the sole vendor license from rish ... and were golden.*

The evidence is that, as at 28 July 2017, the POs raised in Novation's favour – namely, six for the trials and scoping studies (discussed in chapter 3) and four for the supply of spare parts (discussed in this chapter) totalled approximately \$1.19 million. The "multiple 200k contracts" Mr Soliman referred to were the spare parts POs, three of the four of which were between \$200,000 and \$250,000 in value. Chapter 9 examines Mr Soliman's conduct in setting the tender requirements for inclusion on the HVM panel. As he promised Novation, he would specify that the tenderers for the supply of parts must have a licence from IRD, which "essentially just leaves novation". This would ensure that Novation got the "real substantial contracts" and that would get Mr Soliman and Mr Thammiah where they needed to be much faster.

### **"we should have done this by the book in hindsight"**

As noted above, on 16 August 2017, Novation secured a renewal of the exclusive NSW distributorship of IRD products until 1 March 2018. On 24 August 2017



Mr Soliman sent Mr Thammiah a message to say:

*Accuweigh are suing mark mitchell...*

*Will result in an audit of the tender process*

*Lucky i did it properly.*

While Mr Soliman was commending himself for conducting the tender process “properly”, the WhatsApp messages indicate that Mr Thammiah was lamenting the fact that Novation’s supply of spare parts had not been “by the book”. On 21 August 2017, Mr Soliman told Mr Thammiah that there were parts missing from two sets of SAW 10C III dynamic scales and ramps that other WhatsApp messages indicate were delivered to Mr Thammiah’s apartment in late July and dropped off on 7 August 2017 by him to the sector manager, Mr Jones, at Penrith using Mr Soliman’s ute.

The messages indicate that Mr Soliman directed Mr Thammiah to contact Mr Jones about the missing parts and was worried that “this looks really bad” but that “as long as david [Jones] sees action itll be ok”. Mr Soliman also directed Mr Thammiah to contact IRD to “demand” the missing parts arrive that week, claiming, “I gotta answer to the state manager today” and that “this only makes me look bad”. Mr Soliman also told Mr Thammiah “I shouldn’t get involved. Looks suss as hell”.

On 28 August 2017, Mr Thammiah informed Mr Soliman that IRD would send the missing parts in three weeks but had to conduct a parts audit first. Two days later, Mr Thammiah told Mr Soliman that the problem must be at RMS’s end and that IRD had accounted for all parts sent and none should be missing. Mr Soliman responded, “Don’t know how much longer this can hold” and Mr Thammiah responded, “Pretty obvious that we should have done this by the book in hindsight ... I don’t trust anyone on both sides”.

Mr Soliman was insistent that Mr Thammiah sort the problem out with Mr Jones, warning and imploring:

*This is literally about to blow up in our faces*

*Procurement will commence an audit on all orders placed with novation*

*This is happening with another vendor now*

*We can settle this quickly. Just go see david today then order the missing parts. Even if we pay its ok.*

*We secure our business with them. The longer we wait ... higher chances r that they will go haenni come the tender*

*The state manager and director have asked me to see them about this Monday morning again*

*This is the 3rd time*

*Let me know asap what u end up doing*

*Please bro ... this time ... just this time ... focus on it and make sure this happens*

*My job is literally on the line again.*

Mr Thammiah asked Mr Soliman how it was that his job could be on the line given it was not his fault and “Novation fucked up”. Mr Soliman replied, “I done the goods receipt without the goods being received lol. Against procurement rules”.

The messages show that, eventually, Mr Soliman led Mr Thammiah to believe that he had smoothed things over with those responsible for auditing RMS procurement and had averted a crisis for Novation and Mr Soliman’s own job.

Mr Jones gave evidence about a trial of four SAW 10C III dynamic scales (two sets) procured through Novation from IRD for trial. He said the scales would not work because of software problems and that, because of this, his manager negotiated for Mr Thammiah to take the scales back and provide six non-dynamic scales by way of replacement.

On 2 May 2018 via WhatsApp, Mr Thammiah sent Mr Soliman a copy of a letter that Mr Malhotra proposed to send RMS apologising for shortcomings of the SAW 10C III dynamic scales. Mr Malhotra wrote:

*At this time we have issued a full refund for the components as identified by Novation Engineering as well as the transportation charges incurred to ship to Australia.*

*As a testament of our commitment to RMS, please accept six SAW 10A III Australian version scales (out of the one hundred and twenty five already ordered) at no cost to RMS or Novation.*

Mr Soliman asked Mr Thammiah whether Mr Malhotra would be sending the letter to him or to Mr Soliman. He said to Mr Thammiah:

*Seeing as novation isn’t passing on the refund to rms ... this is risky*

*Tell rish to send it to you*

*Then we’ll decide what to do.*

The evidence is clear from the IRD invoices and financial information that, on 29 March 2018, Novation was refunded the cost of the four SAW 10C III scales and shipping it paid for in June 2017. Novation did not pass this refund on to RMS or reverse its previously issued invoices. Novation appears to have ordered and paid for

six 10A III scales from IRD on 23 March and 11 April 2018. It was later "reimbursed" for this order by obtaining six "free" SAW 10A III scales as a goodwill gesture from IRD. These six SAW 10A III scales were delivered to RMS with the 125 scales Novation had successfully tendered to supply RMS in March 2018, which is the subject of examination in chapter 11 of this report.

On 4 September 2017, Mr Soliman told Mr Thammiah:

*Gotta talk about the tender soon btw. It will be on the public e-tender site soon. You need to prepare the tender response to be placed on a panel of successful vendors. Then we can procure all we like. No limits and no risk*

*Been working on it for months.*

Later that day, Mr Thammiah informed Mr Soliman that the managing director at Accuweigh had contacted him and asked for Novation's prices. Mr Soliman told Mr Thammiah the same person had contacted him as well and asked whether he preferred the maintenance vendor to be the same as the procurement vendor. Mr Soliman told Accuweigh's managing director it was up to IRD to appoint the vendors. He asked Mr Thammiah:

*R u gonna give him sa[m]e prices we were using? ...*

*They were exorbitant*

*Yeah drop the parts pricing*

*Half of what we are using now.*

Mr Thammiah responded "5x" and Mr Soliman responded:

*Exactly...*

*Can u also call rish to confirm whether their wholesale pricing is confidential?*

*I don't want jason to know the big profit margin.*

## Mr Thammiah's evidence

Mr Thammiah agreed that, in the first half of 2017, he applied an extraordinary mark-up (he agreed to a figure of 1,000%) on IRD's wholesale prices to the spare parts he supplied RMS. He said that, while he thought these prices were high, they were warranted because:

*...the perception was that the maintenance would be where you really made money in this contract, so when I didn't get the maintenance and I had was the parts, it made sense to charge ... quite a bit for the parts.*

He denied that he had an expectation that, when he issued invoices for spare parts, Mr Soliman would do what was necessary within RMS to approve them.

However, he gave evidence that he formed an understanding through discussing the matter with Mr Soliman that, while Novation's prices were high, RMS would be "okay" with them.

Mr Thammiah claimed that he had prepared Novation's price list, or quote numbered "101", which was submitted to Mr Singh on 1 December 2016, and he denied that Mr Soliman had had any involvement in its preparation. He agreed that a discussion took place about price because Mr Soliman was "so involved with my work" and he thought of him as a "mentor", but he could not recall whether there was a discussion about adding a zero to IRD's prices. He later said that the 10-times mark-up on IRD's wholesale prices would have been something he agreed on with Mr Soliman.

Mr Thammiah claimed that, to his knowledge, Mr Soliman never prepared a Novation document apart from the scoping study report on the ruggedised tablet trial discussed in chapter 3 of this report. Despite this evidence, however, he did not deny there was a possibility that Mr Soliman filled out the prices in Novation's quote 101.

Mr Thammiah conceded that he invoiced RMS for batteries that he did not order from IRD or any other source, and that he did not supply to RMS, and agreed that this was wrong. He agreed that there were other parts for which he invoiced RMS that he did not procure from IRD or any other source including SAW 10A series 1 complete electronics, battery compartment covers, ramps, and steel baseboards. Although he admitted this was "wrong", he claimed that he had intended to deliver the outstanding items at some indefinite future date:

*I created a false perception that I could still somehow deliver in the end by using the narrative of a checking process in place or an inventory, like a yearly sort of inventory. I still convinced myself that even though, yes, it was wrong.*

Mr Thammiah was taken to the WhatsApp messages (set out above), in which Mr Soliman asked Mr Thammiah whether he was going to give Accuweigh the same prices "we were using", Mr Soliman noted that they were "exorbitant", and told him to drop Novation's pricing for parts. Mr Thammiah's response to these messages was that he did not recall them and they "didn't make sense". He claimed that he did not believe he charged prices well above the market. He said, "I set the market ... I had the licence ... It was a sole licence agreement, that's, I thought that[s] what everyone did".

Mr Thammiah was taken to the email sent to him by Mr Soliman on 29 March 2017, in which Mr Soliman directed him to create invoices to charge random parts to each of the three existing POs in order to use up the

remaining funds available on them. He denied that he had an expectation that he could invoice for parts even if they were not required by the maintainer. He agreed that he issued three invoices within a matter of minutes in response to this email but denied that he had charged for random parts and claimed to presume that Mr Soliman had given him instructions about the items to include in the invoices. He then admitted it was possible that he *had* determined what to invoice for but could not remember any of this happening.

Mr Thammiah conceded that the inspectors could not get the software to work for the SAW 10C dynamic scales that were ultimately delivered and that he ended up getting a refund from IRD, which he did not pass on to RMS. Mr Thammiah claimed that Mr Soliman told him instead to “deliver scales to the effect of that total”. He also claimed that there were times when he made up for items that he had not supplied to RMS – but had been paid for – by later supplying other items for free, as his “way of validating the lies”. As an example, he said that when the faulty dynamic scales were returned, he supplied six static scales to the inspectors. Mr Thammiah agreed that IRD in fact provided these six scales to RMS at no cost and it was therefore IRD, rather than Novation, that had absorbed the cost. He could provide no other example to support his claim that he “validated the lies” by later supplying items to RMS free-of-charge.

On the final day of the public inquiry, under questioning from his own counsel, Mr Thammiah agreed that no one at RMS had ever ordered SAW 15C scales and he had never supplied any, despite having invoiced RMS between 20 and 29 March 2017 for five such scales. He said that he supplied four SAW 10C dynamic scales to RMS and a fifth directly to Accuweigh. He said that four of these scales were returned to him when it was realised that the software was not “production ready”. He said he then discussed the problem with IRD and it was agreed that six free SAW 10A III scales should be provided by way of compensation for the trouble RMS had experienced. He also claimed that RMS also asked for six SAW 10A scales in lieu of repayment of the amount he had received for the SAW 10C scales, which he had in error invoiced as SAW 15C scales. He claimed that, on top of the six SAW 10A scales provided free-of-charge by IRD as compensation, Novation supplied another four or six SAW 10A scales in lieu of a refund to RMS for the SAW 10C scales that had been returned.

Mr Thammiah claimed that he submitted four separate invoices for five dynamic scales in six days because Mr Soliman told him he could not just put them in one invoice. He said that Mr Soliman told him, “they had to be in \$30,000 orders” for authorisation because “more than \$30,000 goes up to the next tier of management ...

[and] was out of his control”. Mr Thammiah agreed that by “control” he meant that Mr Soliman would “make sure Novation got paid”.

Under cross-examination by Mr Soliman’s counsel on the final day of the public inquiry, Mr Thammiah gave evidence that Mr Soliman knew about the POs, knew about the invoices, and knew that Mr Thammiah was charging RMS for items he was not supplying, “because he knew everything that was happening”.

## Mr Soliman’s evidence

Mr Soliman claimed that he was not aware until the public inquiry of the number of Novation’s spare parts invoices and the regularity of the pattern of their submission to RMS between January and May 2017.

Mr Soliman claimed not to have been directly involved in the process by which the maintenance provider, either Accuweigh or Weighpack, would submit orders for parts to RMS and claimed that it was Mr Singh, rather than himself, who would convey what needed to be ordered to Novation. When it was put to Mr Soliman that the evidence obtained by the Commission indicated that the vast majority of spare parts that were paid for by RMS were never ordered from IRD, let alone delivered to Weighpack, he said:

*...that’s the first I’ve heard anything about that. As far as I know they checked everything was given to Mark Mitchell and also to Accuweigh and I’ve never heard any problems with parts.*

Mr Soliman also claimed to have “no idea” why there were numerous invoices on single days and within single weeks, but that the only thing he could think of was that Mr Thammiah had invoiced according to packages of parts, as that was how the parts were sold. He claimed never to have seen the invoices.

Mr Soliman claimed that he approved multiple large POs for spare parts because parts were needed. He knew that the scales were failing and the maintenance provider was also indicating that parts were needed.

Mr Soliman gave evidence that he could not recall ever discussing the price of parts with Mr Thammiah and did not think he looked at Novation’s prices. He did not recall discussing with Mr Thammiah the need to compare IRD’s and ELWC’s prices with Novation’s, as the evidence indicated he had. He claimed that the first time he had looked at Novation’s prices was as he was being shown Novation’s quote 101 during his evidence, even though he agreed the price list had been sent to his personal email address on 1 December 2016. He claimed it was Mr Thammiah who came up with the prices, asking “who else can it be?”.

Mr Soliman denied that he had created the Novation quote 101 based on the IRD price lists sent to him by Mr Thammiah. He said he did not recall that far back and that it seemed "silly" for him to have done that. He agreed that, on the face of it, Novation's prices were a substantial mark-up on IRD's, but he claimed not to know what a normal mark-up for such things was.

Mr Soliman was asked how he justified approving a second PO on 16 January 2017 for \$220,000 (excluding GST) in circumstances where, by that date, Novation had not issued invoices that had come close to exhausting the first PO raised for \$220,000 nor had any maintenance provider indicated the need for parts worth \$220,000, let alone the \$440,000 then available. Mr Soliman responded that, perhaps, Mr Singh had made a typing error, but the point of those POs was that they were actually for "proactive maintenance" rather than "reactive maintenance".

In relation to Mr Soliman's email to Mr Thammiah of 29 March 2017, in which he told him to charge random parts to use up remaining funds on the existing POs, he claimed not to know why the word "random" was used. He disagreed with the proposition that he was involved in a scheme with Mr Thammiah, whereby he would create POs in excess of what was needed and Mr Thammiah would invoice RMS for those parts at an exorbitant mark-up, resulting in the two of them profiting from the payments made by RMS to Novation. He said that, whatever parts were invoiced for, were needed and, as far as he knew, were delivered.

Mr Soliman was asked whether the number of invoices submitted by Novation in the first half of 2017, all around the \$30,000 figure, was invoice-splitting undertaken intentionally as a means to avoid the procurement manual requirements for an open tender. Mr Soliman responded that he did not know and had not created the invoices. He said he did not recall Mr Thammiah or Mr Singh ever telling him that Novation's invoices had been broken up into "chunks".

Following the Commission's access to the previously inaccessible WhatsApp messages, set out in part above, Mr Soliman returned to give evidence at the public inquiry. If those messages indicated or referred to anything contrary to his interests or previous evidence, he was entirely unwilling to accept the meaning of his own WhatsApp messages on any plain reading. His only concession was a general one:

*I've helped him and I crossed a line obviously but at that time I didn't really think about it that way. I just needed somewhere I could get these parts.*

Mr Soliman was taken to the message from 20 July 2017, in which he informed Mr Thammiah that Mr Malhotra

had guaranteed Novation a sole vendor licence for NSW, saying:

*He will renew ours for procurement*

*We're good :)*

He gave evidence that by "ours" he meant Mr Thammiah's, and denied that he considered Novation to be as much his business concern as Mr Thammiah's. He was taken to multiple examples from the WhatsApp messages in which he used the plural personal pronoun in relation to Novation, including references to "our business", "we need to make an order", "we need to make \$2 million for Novation" and "our goal". He was taken to multiple decisions and instructions issued by him to Mr Thammiah concerning Novation's business which indicated that he was a principal of the company, albeit a hidden one. He denied that this was true. The Commission rejects this denial.

On a number of occasions, Mr Soliman explained his use of the plural personal pronouns for Novation and its plans and profits as, "the wording I used is because we were so close, like brothers, like the same wording you would use with anyone that's very close to you".

Mr Soliman was taken to the messages, cited above, from 4 September 2017, when he asked Mr Thammiah if he was going to quote the same prices to Accuweigh for the spare parts as "we were using", noting that they were "exorbitant" and should be dropped to "half of what we are using now" or "5x" the mark-up. Mr Soliman conceded that Mr Thammiah must have told him Novation's prices after all, that he knew they were exorbitant, and that it "seems like" he must have told Mr Thammiah to halve the "1,000%" mark-up for Accuweigh.

Mr Soliman agreed he told Mr Thammiah to call IRD to confirm their wholesale pricing was confidential and to ensure that it was not disclosed to Accuweigh, because it would then be obvious that Novation's pricing was patently exorbitant. But he disagreed that he was involved in overcharging RMS for the supply of spare parts by Novation, claiming that it was only now that he knew that Novation had issued invoices charging 10-times IRD's wholesale price. That claim is inconsistent with the overall evidence and is not accepted by the Commission.

## Mr Singh's evidence

It was Mr Singh's evidence that he essentially did what he was asked to do by Mr Soliman or, if he questioned anything, he accepted what he was told by Mr Soliman.

For example, Mr Singh said that, when he received another quote from Novation on 1 December 2016, he raised with Mr Soliman the fact that, although he did



not know much about scales at that point, the prices seemed high. He said that Mr Soliman told him that the prices were high because the SAW 10A series I scales had reached the end of their life and were no longer in production, so the spare parts were not available off-the-shelf and needed to be fabricated in Switzerland, where PAT was based. Mr Singh said he did not question this further.

Mr Singh gave evidence that, on another occasion, when he received the first spare parts invoice, he sent an email to Novation and Weighpack to confirm whether the parts as invoiced had been delivered. On hearing from Mr Mitchell that nothing had been received, Mr Singh said he raised the issue with Mr Soliman, who pointed out that the payment terms required Novation to be paid upfront and told him he could approve the invoice. Mr Singh said that was the only time he could recall contacting Mr Mitchell to check what had been delivered.

Mr Singh told the Commission that, when he was asked to raise a second PO for spare parts to the value of \$220,000, even though, by then, only two Novation invoices for around \$30,000 each had been received, he did not recall whether he or anyone in TSS queried the need for this additional PO. He said he did not have much “visibility” of what was going on until Accuweigh took over the maintenance contract again from November 2017, and he was given responsibility for this aspect of RMS business. Then, he used to have regular meetings with Accuweigh, to which Mr Jones was also invited, to get an update on the scales, upcoming repairs, incoming invoices and verification of delivery. But, in the early stages, his involvement with spare parts was just to see the invoices.

He said he trusted that the potentially hundreds of thousands of dollars being paid to Novation at that time was for a legitimate reason, that he trusted that his manager was having him do the right thing, and that he denied turning a blind eye to what was going on. He also denied that alarm bells were ringing for him despite the multiple invoices for around \$30,000 received from Novation in a single day, in quick succession, and on multiple days in a week in March 2017, which suggested invoice-splitting. He said he trusted Mr Soliman too much to think anything dishonest was going on.

## Conclusions

### Mr Soliman’s management of spare parts procurement

The Commission finds that, around the end of 2016, Mr Soliman instituted an arrangement whereby the party providing scales maintenance services for RMS would

need to procure any required parts through RMS rather than directly from IRD or its local supplier. Mr Soliman’s conduct was designed to ensure that he was the only conduit between IRD and RMS, between IRD and the maintenance provider of its products, and between the maintenance provider and Novation (the local supplier). The Commission is satisfied that this was in order to keep IRD’s pricing information confidential from Novation’s competitors and from RMS itself, and to enable him to control all aspects of this lucrative revenue stream for Novation.

The Commission is satisfied that, from early November 2016 onwards, Mr Soliman managed the procurement of spare parts on behalf of RMS. He did this so that he and Mr Thammiah could operate a scheme, whereby RMS’s procurement processes could be exploited to make hundreds of thousands of dollars available to Novation for the order and supply of spare parts.

On 11 November 2016, Mr Soliman directed Mr Thammiah to order the spare parts requested by the maintenance provider even before Novation had been formally appointed IRD’s NSW distributor. In doing so, Mr Soliman was acting to benefit Novation and, through Novation, himself.

### Excessive POs

Mr Soliman signed to authorise POs raised in Novation’s favour for the supply of spare parts purportedly required for the reactive maintenance of RMS portable weigh scales, on the following dates and in the following amounts:

- 22 November 2016 for \$242,000 (quote 100)
- 16 January 2017 for \$242,000 (quote 101)
- 16 January 2017 for \$117,480 (quote 102)
- 29 March 2017 for \$209,000 (quote 101).

Novation’s quotes 100 and 102 had nothing to do with the spare parts required to repair, maintain and certify the ageing SAW 10A series I and II scales in RMS’s fleet, they were not legitimate bases for the POs raised as a consequence, and Mr Soliman knew this.

The amounts set for each of the POs by Mr Soliman were arbitrary, but below \$250,000, to circumvent procurement manual requirements to initiate a tender process.

After the first PO had been raised for \$242,000 but not exhausted, there is no evidence to indicate any justification for the three further POs authorised by Mr Soliman in Novation’s favour to the total value of \$568,480. The Commission finds that Mr Soliman

used his position as HVP Unit manager to enable Novation to access \$810,480 of available funds for "reactive maintenance", when this amount of available funds was not justified by RMS's maintenance needs. The Commission is satisfied that he deliberately and dishonestly avoided the transparent and competitive procurement processes he was obliged to adhere to in relation to this amount of expenditure. He did this to facilitate payments to Novation, which he knew to be unjustified.

The Commission does not accept Mr Soliman's evidence, or submissions made on his behalf and on behalf of Mr Thammiah, to the effect that these POs, which all quite clearly state that they were for "reactive" maintenance, were in fact for "proactive" maintenance, and were intended to ensure sufficient spare parts were available for repair of the entire scales fleet. In any event, proactive maintenance was precisely the basis on which Mr Soliman requested Mr Mitchell to provide a list of the parts that he would need for the next 12 months of maintenance for the whole fleet. It was also the basis on which Mr Mitchell provided his list of estimated required parts, and the basis on which Novation ordered at least double the specified quantities from IRD.

The Commission is satisfied that the spare parts required for maintenance for a 12-month period were those parts actually ordered by Novation from IRD and actually delivered by IRD to Weighpack, as listed in the four delivery dockets provided to the Commission by Mr Mitchell and reflected in IRD's invoices to Novation. The Commission is satisfied that these were primarily minor and relatively inexpensive items.

The Commission is satisfied that the 28 invoices submitted by Novation to RMS between 10 January and 16 May 2017, for which RMS paid Novation approximately \$803,000, were not intended to be for the parts, or the quantities of those parts, required for the proactive maintenance of the SAW 10A series I and II scales for the next 12 months. The Commission is satisfied that there is little, if any, correlation between Novation's invoices and the parts it actually ordered from IRD, and IRD actually delivered to Weighpack.

### Invoice-splitting

The 28 invoices submitted by Mr Thammiah to RMS between January and May 2017 were all around or under \$30,000 because Mr Soliman had instructed Mr Thammiah not to submit invoices exceeding \$30,000. Mr Soliman knew the procurement rules required three quotes for works above \$30,000. He wanted to avoid this requirement and the scrutiny of those invoices by anyone within RMS. The invoice-splitting was done to circumvent procurement rules and minimise the chance of detection.

### "Random parts" invoicing

On 29 March 2017, Mr Soliman directed Mr Thammiah to use up the remaining funds on three existing POs by invoicing RMS for "random parts", knowing that he was authorising the expenditure of RMS funds for items that would not be delivered to RMS.

The Commission does not accept the submissions made on Mr Soliman's behalf, that there was no evidence that those parts were not needed, other than the word "random". The Commission also does not accept the submission made on behalf of Mr Thammiah that Mr Soliman told him that the funds would disappear because of the close of the financial year, asked Mr Thammiah to order some commonly used parts, and that Mr Thammiah saw his invoicing as a form of "pre-purchase".

The Commission finds that many of the parts for which Mr Thammiah invoiced to use up the funds on the POs, such as steel baseboards and battery packs, were never requested by the maintenance provider, or ordered from IRD by Novation, or delivered to RMS. The Commission is satisfied that Mr Thammiah submitted three false invoices on 29 March 2017, knowing that he was charging RMS for items that would not be delivered. The Commission is satisfied that using up funds before the end of the financial year was not a relevant consideration at the end of March and that, in any event, that very day, Mr Soliman requested a further PO be raised in Novation's favour for over \$200,000, which was "used up" by seven invoices submitted by Mr Thammiah in only two days in May 2017.

Mr Soliman's direction to Mr Thammiah, and Mr Thammiah's conduct in response, demonstrate that the POs had been raised by Mr Soliman to profit Novation rather than to respond to an RMS business need. Novation's invoices bore no relation to what it was ordering from IRD and supplying to RMS.

The Commission rejects the submission on Mr Soliman's behalf that he used his personal email address to send the email to Mr Thammiah on 29 March 2017 because he did not have access to his RMS email account when he was away from the office. Evidence available to the Commission indicates that he had access to work emails away from his office on his work telephone and laptop. The Commission is satisfied that he used his personal email address to send this email to Mr Thammiah to avoid detection.

### Exorbitant pricing

The Commission is satisfied that Mr Soliman substantially drafted Novation's quote 101, being its price list for SAW series I and II scale parts, and sent it to Mr Thammiah

from his personal email address to complete and submit. Mr Soliman set Novation's pricing pattern of adding a zero to IRD's US dollar wholesale pricing to achieve an exorbitant mark-up. The WhatsApp evidence clearly indicates that Mr Soliman knew that RMS was not getting the best value for money from these prices, which he himself described as "exorbitant".

Novation paid IRD approximately US\$53,000 for spare parts, which were delivered to Mr Mitchell, and for which it invoiced RMS to the value of approximately \$500,000; this reflected the mark-up applied by Mr Soliman and Mr Thammiah in Novation's quote 101.

## False invoicing

The Commission is satisfied that, between January and May 2017, Mr Thammiah falsely invoiced RMS for the following items in the following quantities, knowing that these items were not needed, that he would not order them from IRD, and that IRD would not deliver them to RMS:

- SAW 10A series I steel baseboards right and left with coupling hardware (16 at \$8,530]
- SAW 10A series I weighpad platform board (1 at \$20,780)
- SAW 10A series I battery pack (44 at \$600)
- SAW 10A series I complete electronics cover (52 at \$1,150)
- SAW 10A series I battery compartment cover (9 at \$440)
- SAW 15C series III dynamic scale (5 at \$9,950).

Novation was paid by RMS for the above-listed falsely invoiced items to the value of over \$297,000.

Mr Thammiah gave evidence, and it was submitted on his behalf, that the reference to the SAW 15C III dynamic scale in his invoices was a "typo" and that he had actually ordered SAW 10C IIIs. It was submitted that, merely identifying that no SAW 15C III scales were delivered, is insufficient to assert that Mr Thammiah invoiced for equipment not delivered and that what is required to resolve the issue is an analysis of the total SAW 10C III scales ordered versus those delivered. The Commission accepts the evidence from IRD that, while it did not sell any SAW 15C III scales to Novation, it did sell five units of the SAW 10C III. The Commission notes that, even if "15C III" was a typographical error, and should have read "10C III", it was repeated in four invoices and extended to Novation charging RMS for the more expensive SAW 15C III rather than the SAW 10C III scale on five occasions.

Only four of the SAW 10C III dynamic scales were delivered to RMS in August 2017, and they were returned to Novation when they could not be made to work. The evidence available to the Commission is that Novation was fully refunded for the cost of the SAW 10C III scales that it had bought from IRD and that, *in addition*, six SAW 10A series III scales were provided by way of compensation by IRD to RMS at no cost to Novation. This evidence does not, therefore, disturb a finding that Novation's invoicing of RMS for five SAW 15C III dynamic scales was false, in that Novation charged RMS and was paid for items it did not supply. The evidence is also clear that Mr Soliman and Mr Thammiah deliberately failed to pass on IRD's refund to RMS.

The Commission rejects the submission made on Mr Thammiah's behalf that no enquiry appears to have been made of IRD to confirm the type and total number of parts and/or scales delivered by IRD. The Commission obtained responses from IRD about the type and total number of parts and the number of scales delivered by IRD and other relevant details concerning orders for scales. In addition, the Commission was provided with financial information concerning Novation's account with IRD, including all invoices issued to, and paid by, Novation, or later reversed, and had available to it all IRD invoices itemising the actual parts and scales ordered by Novation.

The Commission notes the submission on behalf of Mr Thammiah that, on the material provided to the Commission, it is not possible to determine specifically to what extent any parts ordered by RMS from Novation were not supplied. The Commission does not, in fact, find that parts were ordered by RMS from Novation that were not supplied. The Commission is satisfied that there is sufficient evidence available to enable it to find that:

- Mr Mitchell made two requests of Mr Soliman in November 2016 about the parts required for maintenance for the next six-to-12 months
- Mr Soliman told Mr Thammiah to order these parts
- Mr Thammiah ordered these parts from IRD, as evidenced by invoices from IRD to Novation, which record the specific items Novation ordered to be shipped to Weighpack's address between January and April 2017
- these parts were delivered to Mr Mitchell, as evidenced by the four delivery dockets, accompanying the shipment of goods on 31 January and 14 March 2017 and email communication between Mr Mitchell and Mr Soliman.

The Commission finds, rather, that Novation *invoiced RMS and was paid* for parts that were not supplied.

The Commission is satisfied that the parts for which Mr Thammiah invoiced RMS simply do not correlate with the parts required, ordered and delivered, as itemised in the evidence set out above. The Commission is satisfied that there is no utility in trying to draw conclusions about what was and was not delivered on the basis of the items for which Novation invoiced RMS.

In reaching its finding that Novation submitted false invoices to the value of approximately \$297,000, the Commission has accepted IRD's advice as to the items it did *not* supply to RMS at all, or which were not ordered until February 2018 or delivered until April 2018. For the latter category of items, the Commission is satisfied that Novation issued a further invoice in March 2018, and was paid for them.

The Commission considers that there is insufficient evidence, or insufficiently clear evidence, to allow it to be satisfied to the requisite standard that Novation failed to supply parts and quantities of parts for which it invoiced RMS other than those items, listed above, for which the Commission is satisfied it falsely invoiced.

The Commission rejects the submission on behalf of Mr Thammiah that:

*...there is evidence that Novation's invoices to RMS between January and June 2017 were for an amount in excess of \$750,000.00, while he had paid to IRD during that time in excess of \$165,000.00. In the context of an assertion that Novation had been marking up their spare parts costs by some ten times, mathematically it is simply illogical to suggest both that Novation had marked up its parts by 10 times, and also that it had not ordered from IRD parts for which it had been paid by RMS.*

The Commission does not accept this submission. The evidence, as presented above, is that, by the end of the 2016–17 financial year, Novation had paid just over US\$53,000 to IRD for items the Commission is satisfied were legitimately required for reactive or even proactive scales maintenance, and which had been delivered to the maintenance provider. By this stage, Novation had been paid over \$800,000 by RMS for 28 invoices for spare parts.

The Commission is satisfied that approximately \$297,000 of this amount was false invoicing. Therefore, approximately \$500,000 was paid by RMS to Novation for parts which the Commission is satisfied were delivered but for which Novation charged an exorbitant price.

It was submitted that the evidence of Mr Mitchell and IRD was not able to be tested. The Commission observes that no request was made on behalf of Mr Thammiah during the public inquiry to cross-examine Mr Mitchell

nor was any objection made to the tender of the written responses from Mr Malhotra and Mr Garza of IRD, which were available to the parties before the public inquiry commenced.

The Commission rejects the submission made on behalf of Mr Soliman that Mr Thammiah was deceiving Mr Soliman about his false invoicing and that Mr Soliman was not aware of it. The Commission is satisfied that the evidence that Mr Soliman drafted Novation's price list with its exorbitant mark-up, that he directed Mr Thammiah as to the amount to invoice (always under \$30,000) and to issue invoices for "random parts" to use up the remaining funds on POs, is clear evidence of Mr Soliman's intimate knowledge of, and involvement in, Novation's invoicing.

The Commission does not accept the submission on Mr Soliman's behalf that it was Mr Singh and not Mr Soliman who approved the invoices and that for three weeks in February and March 2017, while Mr Soliman was overseas and uncontactable, Mr Singh approved Novation invoices without Mr Soliman's specific approval. The Commission is satisfied that the payment milestones in the Novation quotes accepted by Mr Soliman, and in the case of quote 101, substantially drafted by him, required 100% payment on PO creation. The Commission is satisfied, therefore, that by approving the creation of four POs, Mr Soliman was approving the invoices submitted against them, regardless of whether he gave his specific approval each time they were submitted.

Further, contrary to Mr Soliman's submission, leave records show that he was on leave between 13 February and 7 March 2017. Of note, no Novation invoices were submitted during this time. Novation recommenced submitting spare parts invoices on 17 March 2017 and submitted 18 between that date and the end of March.

The Commission rejects Mr Thammiah's evidence that, although he submitted false invoices knowing they were false, he eventually intended to deliver the parts to RMS and that he relied on RMS to undertake some sort of inventory to establish what it had paid Novation for but which Novation had not yet supplied. The Commission is satisfied that the WhatsApp messages indicate that he was an active party in the deceit practised on RMS and that he was anxious to maximise Novation's profit at the expense of RMS.

In any event, the Commission is satisfied that, while Weighpack held the maintenance contract until the end of August 2017, Mr Soliman made himself the person within RMS responsible for ensuring the parts that were ordered by the maintenance provider were supplied. This only changed once Accuweigh resumed the maintenance of scales and Mr Singh instituted a more robust inventory process.



The Commission is satisfied that Mr Thammiyah gave false evidence to the Commission when he claimed to have “validated” the nearly \$21,000 he falsely invoiced for a weighpad platform board by later delivering six scales for free. Contrary to his evidence, the weighpad platform board was not an item Mr Mitchell had requested in his first list of parts and the six scales delivered to RMS for free were provided by IRD at no cost to Novation as compensation for faulty dynamic scales (as discussed above).

The Commission is satisfied that Mr Thammiyah gave false evidence to the Commission about providing an additional four or six SAW 10A scales, on top of the six also provided by IRD as compensation, in lieu of a refund for the SAW10C/15C scales for which he had been paid, but which had to be returned. The Commission is satisfied, for the reasons already outlined, that Novation deliberately did not pass on IRD’s refund to RMS.

The Commission is satisfied that Mr Soliman gave false evidence to the Commission about his knowledge of, and involvement in, setting Novation’s prices for scales parts, raising unwarranted POs, instructing Mr Thammiyah to invoice for “random parts” and his knowledge that Mr Thammiyah was submitting false invoices for items Mr Soliman knew were not required and would never be delivered.

The Commission finds that Mr Soliman’s evidence about these and other matters was deliberately unhelpful and evasive. Mr Soliman mostly claimed not to recall any relevant details but otherwise gave, if the meaning was against his own interests, obfuscatory responses or completely refused to accept that the incriminating WhatsApp messages meant what they clearly meant on their face.

The Commission is satisfied that, in his WhatsApp communication with Mr Thammiyah, Mr Soliman’s use of “we”, “us” and “our” when referring to Novation’s business, plans for the future and profits reflects their joint enterprise or scheme; that is, he was Mr Thammiyah’s partner in a scheme to exploit RMS to profit Novation and ultimately himself.

The Commission rejects the submission made on Mr Soliman’s behalf and repeated throughout his own evidence in the public inquiry, to the effect that when he used “we”, he was referring to Mr Thammiyah, because of how close he was to him. In other words, as it was put on his behalf:

*...they are amigos, and what is good for one, is regarded by the other as a source of happiness for the other person. Equally when there are issues which are bad for the other, that is regarded as being mutually bad.*

The Commission is satisfied that this submission is a clear example of the refusal of Mr Soliman to accept the evidence against him and admit wrongdoing.

The Commission notes myriad examples in the WhatsApp messages of Mr Soliman making a distinction between himself and Mr Thammiyah about what they both needed to do for the joint enterprise, including his message on 28 July 2017, when he talks about the upcoming HVM panel tender he was then working on:

*I’ll be the tender selection panel. So ... really all we need to bank on is u getting the sole vendor license from rish ... and were [sic] golden.*

The Commission is satisfied that the WhatsApp messages constitute clear evidence of the joint scheme; that is, Mr Soliman and Mr Thammiyah knew that what they were doing was wrong and against RMS procurement requirements and that they sought to conceal it from others at RMS, from IRD and from Novation’s competitors.

## Corrupt conduct

### Mr Soliman

Between late October 2016 to at least the end of the 2016–17 financial year, Mr Soliman misused his position as manager of the RMS HVP Unit by engaging with Mr Thammiyah in a deliberate scheme to make as much profit as possible for Novation from the supply of scales spare parts to RMS, which involved, among other things, causing the payment by RMS to Novation of 27 invoices to a total of over \$803,000 for scale parts, software and hardware, knowing that such items would either not be supplied or, if supplied, would be subject to exorbitant mark-up by Novation.

This conduct on the part of Mr Soliman was corrupt for the purposes of s 8(1)(b), s 8(1)(c) and s 8(2A)(c) of the ICAC Act. It involved the dishonest and partial exercise of his official functions for the reasons outlined above. It involved a breach of public trust, in that it was not motivated by the need to ensure RMS acquired the spare parts needed for scales maintenance in the most cost effective and efficient way, but was motivated to ensure maximum profit for Novation, and ultimately himself. It involved a senior public official approving the expenditure of significant amounts of public money to pay invoices that he knew were either false or grossly inflated for private advantage and could impair public confidence in public administration.

For the purpose of s 9 of the ICAC Act, Mr Soliman’s conduct could involve offences of misconduct in public office, fraud contrary to s 192E(1) of the Crimes Act or

of aiding and abetting Mr Thammiah to commit offences under s 192E(1) of the Crimes Act.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman had committed criminal offences of misconduct in public office, fraud contrary to s 192E(1) of the Crimes Act or of aiding and abetting Mr Thammiah to commit such offences. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied, for the purpose of s 74BA of the ICAC Act, that Mr Soliman's conduct is serious corrupt conduct. It involved his participation in a deliberate and dishonest scheme with his friend, Mr Thammiah, to exploit RMS's need for spare parts to repair and calibrate its ageing portable scale fleet to earn hundreds of thousands of dollars in profit for Novation. It involved considerable planning and deceit. Mr Soliman made himself the only conduit between RMS, the scales maintenance provider, the overseas supplier and its local supplier, Novation. In that way, he could control every aspect of the spare parts procurement to ensure maximum profit to Novation without scrutiny. It involved Mr Soliman's use of his position as manager of the HVP Unit to exploit weaknesses in RMS's procurement processes to raise over \$810,000 worth of POs in Novation's favour in just an eight-month period. Mr Soliman knew this amount was grossly in excess of RMS's actual parts requirements, but it enabled him to pre-approve the 28 false and/or exorbitant invoices submitted by Novation to use up these funds.

Mr Soliman's conduct indicated a complete disregard for the responsibilities and obligations of his position. He was not motivated to ensure the best value for money for RMS, but rather by the desire to ensure maximum profit to Novation and ultimately himself, to the considerable financial disadvantage, of RMS. His conduct would impair public confidence in public administration, given his position, the responsibilities of his position and the substantial quantum of public funds involved. Further, the conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

## Mr Thammiah

Between 10 January and 16 May 2017, Mr Thammiah created 28 Novation invoices totalling just under \$836,000, which he submitted to RMS for payment, knowing that parts for which he invoiced would not be ordered from or supplied by IRD, and/or that the

prices charged were grossly inflated, and knowing that Mr Soliman would use his position at the RMS to cause payment of the invoices to benefit himself and Mr Soliman.

Mr Thammiah's conduct is corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act, in that it was conduct that adversely affected the impartial and honest exercise of Mr Soliman's official functions.

Mr Thammiah's conduct also comes within s 9(1)(a) of the ICAC Act, as it could constitute or involve offences of fraud under s 192E of the Crimes Act or aiding and abetting the commission of misconduct in public office by Mr Soliman.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Thammiah committed criminal offences of fraud under s 192E of the Crimes Act. Alternatively, his conduct could constitute an offence of aiding and abetting the commission of misconduct in public office by Mr Soliman. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

For the purpose of s 74BA of the ICAC Act, the Commission is satisfied that Mr Thammiah's conduct is serious corrupt conduct. It involved his knowing participation in a deliberate and dishonest scheme, which resulted in Novation earning over \$800,000 for spare parts and accessories for which it had only paid IRD approximately US\$53,000. Mr Thammiah knew that the scheme he was participating in with Mr Soliman was wrong, and that he was obtaining money from RMS that he was not entitled to using false pretences. His conduct was premeditated and involved a significant degree of planning and deceit. The false invoicing in which Mr Thammiah engaged, to the value of approximately \$290,000, could involve an offence pursuant to s 192E of the Crimes Act, which has a maximum penalty of 10 years imprisonment, and is a serious indictable offence.

Mr Thammiah's conduct also involved aiding and abetting a public official to misconduct himself in relation to his official functions to ensure that a significant amount of public money would be made available for Novation to issue invoices to use up for parts that Mr Soliman knew would not be ordered from IRD or delivered to RMS, or were for unjustifiably inflated prices, to RMS's considerable financial disadvantage.

## Section 74A(2) statements

The Commission is satisfied that Mr Soliman and Mr Thammiah are “affected” persons for the purpose of s 74A(2) of the ICAC Act.

### Samer Soliman

Mr Soliman’s evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, IRD’s emails, financial records and invoices, Mr Mitchell’s evidence, Mr Jones’ evidence, Novation’s financial records and emails, and the WhatsApp messages between Mr Thammiah and Mr Soliman.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Soliman for:

- offences of fraud pursuant to s 192E of the Crimes Act
- the offence of aiding and abetting Mr Thammiah in the commission of fraud offences pursuant to s 192E of the Crimes Act
- the common law offence of misconduct in public office, arising from his conduct in using his position at RMS to approve \$810,000 worth of POs in Novation’s favour and to dishonestly cause payment by RMS of 27 invoices submitted by Novation to use up the funds available on those POs, which he knew to be false and/or grossly inflated.

It was submitted by Counsel Assisting that Mr Soliman’s evidence on 11 June 2019, that he did not know that Novation was applying a significant mark-up to its prices for spare parts, could amount to an offence pursuant to s 87 of the ICAC Act.

As discussed above, on 4 September 2017 via WhatsApp, Mr Soliman told Mr Thammiah to “drop the parts pricing” as the prices were “exorbitant” and to apply only five-times the mark-up, rather than 10. Confronted with these messages in the later part of the public inquiry, after they had become accessible to the Commission, Mr Soliman conceded that Mr Thammiah must have told him the prices Novation was charging for parts and that he must have known they were exorbitant. He also conceded that he must have told Mr Thammiah to drop Novation’s pricing to half the mark-up they were applying; that is, five instead of 10-times IRD prices.

Mr Soliman denied that he had previously given false and misleading evidence because, he said, he had no recollection then, or now, of discussions with Mr Thammiah about Novation’s prices.

It was submitted on Mr Soliman’s behalf that the proposition that Mr Soliman had given false and misleading evidence on 11 June 2019 was fundamentally unfair and opportunistic. It was submitted that Mr Soliman had made the appropriate concession when the relevant WhatsApp messages were put to him, because his “memory was jolted”. It was submitted that, had the WhatsApp evidence been put to him on the earlier occasion and he continued to assert something contrary, there might be a basis for the submission that he was lying, however, this was not the case.


The Commission has concerns about the significant inconsistencies between the evidence given by Mr Soliman earlier in the public inquiry and that he gave when confronted with previously inaccessible WhatsApp messages. The Commission also finds that Mr Soliman made only grudging and limited concessions about his knowledge of Novation’s exorbitant pricing and mark-up for scales and not because his memory was jolted but because he was confronted with unavoidable, incriminating evidence. However, Mr Soliman’s concessions, albeit unsatisfactory, mean that the Commission is not of the view that consideration should be given to obtaining the opinion of the DPP in respect of any offence under s 87 of the ICAC Act.

As previously noted, Mr Soliman’s employment with RMS was terminated for serious misconduct with effect from 26 February 2019. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

### Stephen Thammiah

Mr Thammiah’s evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, IRD’s emails, financial records and invoices, Mr Mitchell’s evidence, Mr Jones’ evidence, Novation’s financial records and emails, and the WhatsApp messages between Mr Thammiah and Mr Soliman.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Thammiah for:

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- offences of fraud pursuant to s 192E of the Crimes Act
  - the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office.



## Chapter 9: Novation and the Heavy Vehicle Maintenance panel

This chapter examines the creation of the the HVM panel and, in particular, the part of the panel designated “category B”. It examines Mr Soliman’s involvement in setting the criteria for category B to favour Novation. It examines his assistance in the creation of Novation’s tender submission and his conduct in ensuring that Novation’s tender was successful. Just as with AZH’s appointment to the PSC panel (discussed in chapter 6), one of the advantages of appointment to the panel was Novation’s access to more lucrative contracts.

### The HVM panel tender

#### Setting the tender requirements – Category B

On 26 July 2017, Mr Soliman sent Mr Thammiah a WhatsApp message advising that he was “creating a panel for the upcoming scales procurement tender”. On 4 September 2017, he sent a message saying:

*Gotta talk about the tender soon btw. It will be on the public e-tender site soon. You need to prepare the tender response to be placed on a panel of successful vendors. Then we can procure all we like. No limits and no risk*

*Been working on it for months.*

About half an hour before sending that WhatsApp message to Mr Thammiah, Mr Soliman had sent himself an email reminder from his personal to his work email address. He instructed himself to:

*Send final HVP unit plan email to paul [Hayes] and Roger [Weeks] including that I audited agreed HVP agenda contracts and found key efficiencies can be gained by implementing 2 new panel contracts to carry out the majority of work HVP perform including infrastructure building/maintenance. ITS maintenance (where maintenance is not sole vendor licensed to*

*a specific vendor such as camera vendors), R & D (Potential ITS and software solutions that have potential for compliance resource tech/cost savings) ...*

*I expect cost efficiencies by: 1) increasing competitiveness in these niche market industries;*

*2) reducing reactive work (which is generally higher cost than proactive work of the same nature due to economies of scale).*

As evidenced by the messages between Mr Soliman and Mr Thammiah, Mr Soliman intended to participate in the preparation of Novation’s tender.

On 12 September 2017, Mr Soliman sent Mr Thammiah the following messages on WhatsApp:

*Keep 2nd-6th October free yeah?*

*We’ll have a full time job for a few days submitting the novation tender response*

*For now ... i need you to asap register for the NSW GOVERNMENT e-tender website.*

On 21 September 2017 via WhatsApp, Mr Soliman told Mr Thammiah that the tender would go “live” next Monday and asked whether he had confirmed that he could log in and was registered for scales tenders to be sent to him. He asked whether Mr Thammiah was still free the following Wednesday and Thursday, saying, “We got a lot of documentation ahead of us for this ... A little work now and novationsn [sic] secured for the long term”.

On 25 September 2017, RMS placed an advertisement for open tender for the HVM panel on the NSW Government eTender website. The RFT described the work for which RMS was seeking tenders as falling into two categories. Category A concerned civil work and category B concerned:

- *Procurement and maintenance of existing Weigh-in-Motion systems*
- ***Procurement and Maintenance of PAT brand and HAENNI brand portable weighing scales and serviceable spare parts used by heavy vehicle inspectors, including calibration and annual verification.***
- *Procurement and Maintenance of weighbridges, including calibration and annual certification*
- *Procurement and Maintenance of MAHA and Nepean Transport brake testing equipment, including calibration and annual certification.*

#### **IMPORTANT NOTE FOR CATEGORY B ONLY:**

***In relation to procurement of new Category B systems, Roads and Maritime may consider brands not specified above if the tenderer can demonstrate equal or superior performance, life expectancy and serviceability.*** (Emphasis added)

On 26 September 2017 via WhatsApp, Mr Soliman informed Mr Thammiah that the tender was online and asked Mr Thammiah to find it and start working on the response. He told Mr Thammiah that the tender closed in a week or two, and:

*Work is full on ... unsure if I can take a day off to work on it with u. But its very self explanatory once u read it. Essentially u need to prove you've worked for RMS in the heavy vehicle space...which novation has. Also attach the sole vendor license and were [sic] in*

*Can u draft the response and let me know so I can review etc.*

The next day, on 27 September, Mr Thammiah sent a message to Mr Soliman, with a screenshot of the tender requirements set out above under category B, saying, "Can't bid for it...its maintenance of weigh in motion too? ... its full on, Id say it's a no go".

Mr Soliman was not deterred by this message and reassured Mr Thammiah that, "Its a go for sure lol". He told him not to worry about the maintenance aspect of the tender, saying:

*I just want novation on this panel so we can continue procuring ...*

*Bro don't worry i drafted this tender with my team especially for novation*

*Lol*

*And couple other vendors.*

At the public inquiry, Mr Soliman denied that the HVM panel had been his idea or that he had been involved in establishing it. This evidence is not consistent with the WhatsApp messages. Even after being taken to the WhatsApp message to Mr Thammiah, cited above, in which he said that he had been "working on it for months", Mr Soliman gave evidence that "the team were working on it. I really had no part to do with it".

However, Mr Soliman later conceded that, towards the end of their preparation, he was shown the draft tender documents and it was possible that he recommended some changes in relation to parts, including the addition of the word "procurement" to the scope of works under category B of the tender requirements. This was an important concession, as the key to Novation's future successful tendering as a member of the panel relied on its ability, as the sole licensee of IRD products, to procure scales and spare parts.

Mr Soliman asserted that the "we" in his message to Mr Thammiah on 27 September 2017, about needing Novation on the panel so "we can continue procuring", was a reference to RMS being able to continue getting the parts that were urgently needed. Mr Soliman said that it would make no sense at all if "we" in that context was a reference to Novation. This response is inconsistent with his message on 4 September 2017, in which he had told Mr Thammiah, that, once Novation was on the panel, "we can procure all we like. No limits and no risk", clearly meaning himself and Mr Thammiah, through Novation.

Taking into account the WhatsApp messages, there is no confusion or ambiguity in Mr Soliman's use of pronouns. The Commission is satisfied that Mr Soliman can clearly discriminate in his use of pronouns when referring to himself, Mr Thammiah, the two of them, Novation and RMS when discussing his plans to exploit RMS for Novation's profit. The following set of messages to Mr Thammiah on 28 July 2017 is just one of the many clear examples of there being no confusion:

*Ull [you will] eventually have to come in to meet the procurement team to submit your tender response*

*Ill be the tender selection panel. So ... really all we need to bank on is u getting the sole vendor license from rish ... and were [sic] golden.*

The Commission is satisfied that Mr Soliman thought of Novation as just as much his business as Mr Thammiah's, and that is why he more often than not used "we" and "our" when speaking of it.

## Novation's tender response

During the public inquiry, Mr Soliman was taken to the WhatsApp message of 12 September 2017, in which he said to Mr Thammiah, "we'll have a full time job for a few days submitting Novation's tender response". He denied working on, or intending to work on, Novation's submission. The evidence suggests otherwise.

On 27 September 2017, Mr Soliman asked Mr Thammiah to complete a first draft of Novation's response and let him know so that he could come over to review it with him. Mr Thammiah promised to "give it a crack". Mr Soliman claimed he offered this as a "very very close friend", in case Mr Thammiah needed his help.

During this exchange, Mr Thammiah also told Mr Soliman, "We should switch to wickr too ... better for anonymity". Mr Soliman responded, "Whatsapp uses encrypted messages btw So they cant be read by a 3rd party like a telco etc".

Mr Thammiah said that, at the time, he thought it was acceptable that Mr Soliman was assisting with Novation's submission for the HVM panel tender because Mr Soliman told him quite a few times that "he hadn't breached probity". Mr Thammiah said that Mr Soliman gave him "illogical premises to follow and [he] stupidly followed them blindly", and that he could see now, as he could not at the time, that they were both deceiving RMS by talking about the tender and Novation's submission.

Mr Thammiah claimed that he suggested they switch to using the Wickr app because he was concerned that Mr Soliman was "crossing lines" and he wanted to question whether that was in fact the case. He claimed not to be able to see at the time that Mr Soliman was acting contrary to his duties as an RMS employee, that is, not impartially, independently or appropriately, and claimed that the Wickr suggestion was his roundabout way of asking him.

There is an irreconcilable contradiction between Mr Thammiah's evidence – that he believed Mr Soliman had not "breached probity" and was acting appropriately in helping Mr Thammiah with Novation's tender submission – and his evidence that he suggested they switch to Wickr for anonymity in order to test whether Mr Soliman was in fact acting appropriately.

The Commission is satisfied that Mr Thammiah suggested switching to Wickr because he both knew that what they were doing was wrong and wanted to avoid detection. Mr Thammiah's evidence about the reason for his suggestion to Mr Soliman was a dishonest attempt to provide an innocent explanation for the evidence of his awareness of wrongdoing and attempts to hide it.

In keeping with the desire to keep their communications secret, on 4 October 2017, in a series of WhatsApp messages about the requirements for Novation's tender response, Mr Soliman told Mr Thammiah to send the documents he was going to submit to Mr Soliman's gmail address. Mr Soliman denied that this was because he did not want it known that he was reviewing Novation's tender and said it was probably because he was not at home at the time.

On 4 October 2017, Mr Soliman asked Mr Thammiah to let him know when he had sent Novation's tender response to his gmail address and told him "Thx for handling this part". On the morning of 6 October 2017, Mr Soliman told Mr Thammiah on WhatsApp, "Doc looks good btw bro". Around midday on 6 October 2017, Mr Thammiah confirmed for Mr Soliman that he had dropped Novation's tender submission into the RMS tender box and Mr Soliman responded, "Welcome to the RMS panel of government approved vendors".

On 8 October 2017 via WhatsApp, Mr Soliman told Mr Thammiah that tender results would be finalised during the week of 23 October and, "the contract will be a \$2M max contract every year. So from October till June ... gonna be a busy year for us lol".

Mr Thammiah gave evidence that he knew, from the numerous WhatsApp messages between them, that Mr Soliman was involved in creating the HVM panel and that his intention was that Novation would be appointed to that panel. He agreed that Mr Soliman's reference to, "we can procure all we like. No limits and no risk", was to Novation once it was on that panel. Although he claimed not to think so at the time, he agreed that he understood that Mr Soliman thought of Novation as just as much his business as Mr Thammiah's.

Mr Thammiah said that he did not think he could bid for the maintenance panel tender because he could not satisfy the maintenance requirement. He said he proceeded after Mr Soliman clarified that he could respond to the procurement of scales component of the category B scope of works.

Mr Thammiah agreed that he intended Mr Soliman to assist him with Novation's response for the HVM panel tender. He agreed that he knew Mr Soliman wanted Novation to get the contract. He agreed that, during this time, he was also giving Mr Soliman cash, but he denied that the two of them were scheming to ensure Novation would be appointed to the HVM panel and that the payment of money to Mr Soliman could or would influence him in the performance of his job at RMS.

Mr Thammiah grudgingly agreed that he used Mr Soliman's personal email address rather than his RMS address to send him documentation because he knew

Mr Soliman should not be receiving it, but he also claimed that he did not think it mattered at the time and said, “I followed him blindly and whatever he said I did”.

Mr Thammiah claimed that, although he understood at the time that Mr Soliman was favouring Novation, he saw it as Mr Soliman “favouring the best scale” and “I was the distributor of the best scale”. The Commission rejects that evidence.

The Commission is satisfied that, as the manager of the HVP Unit, Mr Soliman was ultimately responsible for the implementation of the HVM panel.

The Commission accepts that there is insufficient evidence to enable it to be satisfied that Mr Soliman drafted the tender requirements, as he claimed to Mr Thammiah he had done with his team “especially for novation”. However, the Commission is satisfied that he recommended the addition of the word “procurement” to the scope of works under category B in the tender requirements. Without that addition, the HVM panel could not have been used to procure the spare parts needed to repair and maintain the PAT scales used by RMS and, ultimately, to replace the entire RMS fleet of scales (as discussed in the final chapters of this report).

The addition of the word “procurement” in one stroke expanded the stated rationale of the HVM panel from the *maintenance* of RMS’s heavy vehicle assets to include the procurement of new equipment, including portable scales. The Commission finds that Mr Soliman intended this to be the effect and that is why he described the HVM panel tender as the “scales tender” in his WhatsApp communications with Mr Thammiah.

The Commission does not accept Mr Soliman’s evidence that, when he told Mr Thammiah “we’ll have a full time job for a few days submitting Novation’s tender response”, he did not intend by his words that he would be involved in preparing Novation’s submission. The Commission does not accept his assertion raised about this comment and throughout his evidence, that the words “we” and “I” were used by him in the WhatsApp messages in a way other than in accordance with their natural meaning because of his closeness to Mr Thammiah.

The evidence establishes that, from the time the HVM panel RFT was issued on 25 September 2017 to the submission of Novation’s tender response on 6 October 2017, Mr Soliman assisted Mr Thammiah in answering the tender criteria and what he needed to submit with Novation’s response.

The Commission is satisfied that Mr Thammiah submitted Novation’s tender knowing that Mr Soliman was favouring Novation improperly through his involvement in setting the tender, communicating with Mr Thammiah

about the tender, and assisting him with Novation’s tender submission. Mr Thammiah agreed with the plan to tender for the panel, despite initial reservations that Novation could not meet the criteria, because Mr Soliman assured him that Novation *would* meet those criteria and had to be on the panel to secure ongoing business from RMS.

The Commission is satisfied that Mr Thammiah knew that his tender submission for inclusion on the HVM panel would not be treated on an equal footing to all other tenders, in circumstances where Mr Soliman had been showing very considerable favour to Novation for more than two years, and where he told Mr Thammiah that he had reviewed his submission, that he wanted Novation to apply to secure its business “for the long term” and “to continue procuring”, and that he had drafted the tender with his team with Novation expressly in mind. The Commission is satisfied that these were all facts known and acceded to by Mr Thammiah.

### “We’re a shoe in” – the tender evaluation

The TEC consisted of three RMS employees, who reported directly to Mr Soliman, including Mr Singh. Mr Chehoud from WSP was the external member. Mr Singh gave evidence that he was pulled in to be part of the TEC five minutes before the tender evaluation began. They met on 9 October 2017 when the tenders were opened.

At 11.22 am on 9 October 2017 via WhatsApp, Mr Soliman told Mr Thammiah:

*The guys are reviewing your tender now by thr [sic] way ...*

*Only 12 responses total ...*

*Accuweigh, weighpack, novation*

*And some other random*

*We’re a shoe in.*

This disclosure of the number of responses and the identity of some of the responders was a disclosure of confidential RMS information by Mr Soliman.

In fact, 13 companies tendered in total, including five companies for inclusion in category B of the HVM panel. HAENNI did not submit a tender. As the sole distributor of PAT products in NSW, Novation had no competition on this panel in the applicable category of works. This, no doubt, explains Mr Soliman’s words “we’re a shoe in”.

On 12 October 2017, Mr Chehoud drafted a memo addressed to Mr Soliman, to report on the tender evaluation for the HVM panel. The draft memo noted that this was a non-price tender and that the criteria and corresponding weightings used for the tender assessment were as follows:



- *Demonstrated experience in carrying out the specified work* 45%
- *Responsiveness in carrying out the specified work* 30%
- *Adaptability and flexibility to meet customers' objectives in carrying [out] the specified work.* 25%

It reported that the TEC determined that all 13 tenderers had the capacity to complete works within the contract period based on similar works successfully completed for RMS; although it noted that the quality of the tender responses varied, as reflected in the TEC's tabulation of its scoring of the tenders against the assessment criteria.

Novation scored 6 out of 10 for the "demonstrated experience" and "adaptability and flexibility" criteria set out above, and 0 for "responsiveness". By contrast, Accuweigh scored 9, 8.5 and 8.5 respectively. Weighpack scored 7, 7 and 6 respectively, and the other two companies scored 0 for two out of three criteria. Nevertheless, all five companies were recommended for appointment to the panel.

The score sheet annexed to the draft memo noted that "Novation is only authorised supplier – not maintainer" of PAT and HAENNI portable scales. This was correct insofar as PAT scales were concerned but, of course, Novation was not a supplier of HAENNI scales.

Different explanations were given about Novation's zero score for "responsiveness". Mr Chehoud told the Commission that his recollection was that Novation was appointed to the panel, notwithstanding its score of zero for responsiveness, because:

*...they had only previously supplied the asset and not maintained it, [so] you couldn't give them a score on how they performed in the past at maintaining it 'cause they were just a supplier but it appeared that they were now tendering to also do maintenance, which was a new service that RMS would be procuring.*

Contrary to Mr Chehoud's evidence, Mr Singh said that Novation scored a zero for "responsiveness" because its tender submission did not demonstrate the timeliness of its response to the RMS work requested of it.

Mr Singh explained that, although a number of tender submissions scored zero for one or more criteria, they were nevertheless appointed to the panel because "all the suppliers were essential to the works our team were doing, so the decision was made to accept all the submissions".

Mr Singh told the Commission that none of the five companies who tendered for, and were included on, category B of the HVM panel were distributors of the HAENNI brand of scale, despite this being one of the RFT criteria. He gave evidence that the only company capable of maintaining HAENNI scales was HAENNI itself and that, if any of the HAENNI scales that were used by RMS needed repair, the inspectors had to send them directly to HAENNI in Queensland for fixing.

On 16 October 2017, Mr Soliman sent a WhatsApp message to Mr Thammiah, saying, "Btw. Signing tender docs tomorrow. Novation has been successful. Yeehaaa".

The TEC's finalised memo was addressed to Mr Hayes and signed by all members of the TEC. On 17 October 2017, Mr Soliman also signed the document, which included a declaration that there was no actual or potential conflict or incompatibility between his personal or corporate interests and the impartial fulfilment of his duties in carrying out the tender assessment. In signing, Mr Soliman endorsed the recommendation of the TEC to appoint Novation to the Panel.

In evidence, Mr Soliman agreed that he had a conflict of interest because of his relationship with Mr Thammiah and Novation that should have been declared, but claimed not to have seen the relevant section in the memo and that he was only given the back page of it to sign. The Commission does not accept this evidence and is satisfied that, at all relevant times, Mr Soliman was aware that he had a conflict of interest that he should have declared. He did not do so because he did not want to disclose his close association with Mr Thammiah or Novation.

The tender evaluation process itself was so lacking in rigor as to be almost pointless in that every tender response, no matter how poor, was accepted. The Commission finds that a decision was made to accept every tender submission on the spurious basis that all of the suppliers were considered essential to the work of the HVP Unit and is satisfied that Mr Soliman and Mr Thammiah knew and relied on the fact that Novation's sole distributorship of IRD's products would be "the golden ticket".

## The 2018 spare parts contract

On 19 October 2017, Mr Soliman sent the following message to Mr Thammiah:

*Keep ya updated ... Big things happening for novation this year*

*I can smell it*

*We'll sit down once i have confirmation so we can agree how were gonna work together yeah?*

*We need to work better together than we did last year.*

That day, Mr Soliman also informed Mr Thammiah via WhatsApp that Weighpack had lost the “court battle” against Accuweigh and had been ordered not to undertake any further work for RMS for the next 12 months, observing “so thats 1 competitor gone”.

On 20 October 2017, Mr Hayes sent a letter to Novation accepting its tender for the HVM panel and, on 30 October 2017, Mr Thammiah returned the signed panel contract.

On 29 November 2017, Mr Singh sent an RFQ to three contractors from the HVM panel for the supply of parts for the PAT SAW 10A series I portable weigh scale, including Novation. The RFQ requested the tenderer to provide a fixed price quote for the supply of a list of SAW 10A series I parts and the quantities in which these were required to service 50 scales. The contract duration was said to be for seven months and the RFQ closed on 6 December 2017.

Mr Singh gave evidence that Mr Soliman told him to issue the RFQ to only three members of the HVM panel. When he asked what the point of this RFQ was, in circumstances where the only authorised NSW distributor of PAT SAW parts at this time was Novation, Mr Soliman told him that the procurement guidelines required an RFQ be issued to multiple contractors if it was over a certain value.

On 6 December 2017, Mr Thammiah emailed Mr Singh Novation’s quote for US\$590,000. Mr Singh gave evidence that he was not surprised by the size of this quote at the time, but agreed that, looking at it in the public inquiry, it was a startling amount for spare parts.

Notwithstanding the significant overall price quoted by Novation, a comparison of Novation’s December 2017 price list, with Novation’s quote 101, which was submitted the previous year in relation to the same spare parts (discussed in chapter 8 of this report), shows a marked *decrease* in pricing of the spare parts. If quote 101 represented a nearly 10-times mark-up on IRD’s wholesale prices, in December 2017 Novation’s pricing represented a mere three-times mark-up. This is consistent with the WhatsApp exchange on 4 September 2017, in which Mr Soliman told Mr Thammiah:

*...drop the prices to 3x*

*That’s a 300% markup. We cant charge more than that. Too risky we may lose the sole license somehow. Also whoever wins the maintenance tender has been advised that rms will be starting a refurbishment project for scales so we will be needing HEAPS of parts so we will still be making a lot of profit.*

Mr Singh said that the quote from Novation did not progress and that he had to issue a further RFQ in early 2018. He said the price may have had something to do with that because, early the next year, Mr Soliman told him there was a budget of only \$220,000 or thereabouts available for spare parts. Mr Soliman told Mr Singh to issue a new RFQ for a reduced quantity of spare parts to meet the available budget.

On 17 January 2018, another RFQ was issued by Mr Singh for the supply of a significantly reduced number of parts for the SAW 10A series I scale. On 24 January 2018, Accuweigh’s managing director emailed Mr Singh to say that, due to the current arrangements for the supply of spare parts, Accuweigh was unable to submit a competitive offer. Mr Singh gave evidence that the “current arrangements” referred to the fact that, even though Accuweigh had the maintenance contract for the IRD supplied scale, if it wanted to supply RMS with the parts as well, it would have to first source these through Novation, IRD’s local supplier. Mr Soliman sent a screenshot of Accuweigh’s response to Mr Thammiah via WhatsApp on 24 January 2018, to which Mr Thammiah responded “hahaha”.

The day after Accuweigh’s response, Novation submitted a new quote for significantly fewer parts than its previous quote, to the total value of just under \$220,000 (excluding GST).

On 29 January 2018 via WhatsApp, Mr Soliman sent a message to Mr Thammiah, “Btw ... I’m creating the contract for parts today. We won the tender”. On 30 January 2018, Mr Soliman sent another message to Mr Thammiah advising, “We won the parts tender bro. I’m signing the PO tomorrow”.

On 1 February 2018, Mr Singh advised Mr Thammiah that Novation’s quote had been accepted and requested a formal quote from him. Mr Thammiah submitted Novation’s quote numbered “203” on 5 February 2018, reflecting the same prices and total amount as in Novation’s response to the RFQ. At Mr Soliman’s request, on 12 February 2018, a PO was raised in Novation’s favour for \$240,675.60. Mr Thammiah submitted an invoice on 1 March 2018 for the full amount and was paid by RMS on 19 March 2018. The one invoice submitted by Novation in March 2018 for the supply of \$240,000 worth of spare parts is to be contrasted with the multiple invoices under \$30,000 submitted by Novation for spare parts the year before.

Just as Mr Soliman had promised, Novation’s appointment to the HVM panel had enabled the award to it of large contracts, “no limits and no risk”.

Mr Soliman’s efforts at removing competition, limits and risk from the future procurement of scales and parts

from Novation quickly bore fruit. On 12 February 2018, Mr Soliman authorised a PO in Novation's favour for the supply of over \$240,000 worth of spare parts, which Novation "used up" with just one invoice. This contract and Novation's invoicing had the veneer of legitimacy but, leading up to it, the Commission is satisfied there was a carefully and deliberately engineered scheme to eliminate Novation's competition, which was to the financial disadvantage of RMS and contrary to Mr Soliman's obligation to ensure that he obtained the best value for money for his employer.

The evidence establishes that Mr Thammiah invoiced RMS and was paid for those items that IRD advised the Commission were ordered from it in February 2018 and shipped by it to Accuweigh in Victoria in April 2018. Mr Thammiah paid IRD approximately US\$46,500 (including shipping) for the items for which RMS paid Novation over \$240,000.

## Corrupt conduct

### Mr Soliman

#### (i) The tender

Mr Soliman misused his position as manager of the RMS HVP Unit to assist Novation to be appointed to the HVM panel by the following conduct: he ensured criteria was included in the RFT that would enable Novation to tender and which it could satisfy, and he assisted Mr Thammiah with Novation's tender submission. He did so in order to continue to benefit from the money Novation would receive from RMS as a result of gaining work as an HVM panel member.

This conduct on the part of Mr Soliman is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest and partial exercise of his official functions.

For the purpose of s 9(1)(a) of the ICAC Act, his conduct could constitute or involve the common law criminal offence of misconduct in public office.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Soliman had committed the offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

Mr Soliman's conduct also falls within s 9(1)(c) of the ICAC Act, in that it could involve or constitute reasonable grounds for dismissing, dispensing with the

services of or otherwise terminating the employment of, Mr Soliman. Manipulating a tender to favour a friend, and doing so for personal financial benefit, involves such substantial breaches of the Code of Conduct that it could warrant that outcome. Further, pursuant to s 69 of the *Government Sector Employment Act 2013* (NSW), an employee can be terminated if there is a finding of misconduct, which would include a conviction or a finding of guilty in respect of a serious offence. A "serious offence" is defined to mean an offence punishable by imprisonment for life or for 12 months or more, and thus would include an offence of misconduct in public office.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman should be dismissed. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied, for the purpose of s 74BA of the ICAC Act, that this is serious corrupt conduct because the conduct was motivated by a desire to position Novation to obtain further contracts for procurement of portable weigh scales. The appointment of Novation to the HVM panel facilitated Novation's success in two further tenders in 2018 worth over \$9 million and in obtaining a large contract (worth around \$240,000) for the supply of spare parts. As discussed below, Mr Soliman stood to personally profit from those tenders and the spare parts contract and was motivated by greed and self-interest. As manager of the HVP Unit responsible for establishing the HVM panel, Mr Soliman held a position of trust within RMS and his conduct involved a significant breach of that trust, including because of his failure to disclose his personal friendship with Mr Thammiah. It was premeditated conduct involving a significant level of planning. The conduct could constitute the offence of misconduct in public office, which is a serious offence for which the maximum penalty is at large.

#### (ii) Failure to declare a conflict of interest

On 17 October 2017, Mr Soliman signed a conflict of interest declaration in relation to the HVM panel in which he falsely declared that he had no actual, perceived or potential conflict of interest.

Mr Soliman's conduct in deliberately failing to disclose his conflict of interest arising from his friendship with Mr Thammiah is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act because it is conduct that involved the partial and dishonest exercise of his official functions.

Mr Soliman's conduct in this regard comes within s 9(1)(c) of the ICAC Act in that the conduct could constitute or involve reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of Mr Soliman. His conduct involved breaching the RMS/Transport for NSW code of conduct and conflicts of interest policy, particularly the principles requiring staff members to ensure that there is no actual or perceived conflict between their personal interests and those of RMS and the requirement that staff members disclose any potential or actual conflicts of interest.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman should be dismissed. Accordingly, the jurisdictional requirement of s 13(3A) is satisfied.

In relation to s 74BA of the ICAC Act, this conduct is serious corrupt conduct because of the potential value of the contracts able to be awarded to Novation under the HVM panel, the period of the appointment (three years), the significant consequences that flowed from Novation's appointment to the HVM panel (the opportunity for which was known to Mr Soliman at the time), and the fact that Mr Soliman's failure to disclose his conflict of interest was motivated by his friendship with Mr Thammiah, his receipt of cash payments from him, and his understanding that he stood to share equally in Novation's profits (as discussed further in the next chapter).

### Mr Thammiah

Mr Thammiah, in agreement with Mr Soliman, submitted Novation's response to the RFT for the HVM panel knowing that Mr Soliman had used, and would continue to use, his position to favour Novation's appointment to the HVM panel, in the expectation that Novation would continue to profit from RMS business and that he would share in those profits with Mr Soliman.

This conduct is corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act because Mr Thammiah's conduct adversely affected the honest and impartial exercise of official functions by Mr Soliman.

Mr Thammiah's conduct also comes within s 9(1)(a) of the ICAC Act, as it could constitute or involve a criminal offence of aiding and abetting the commission of an offence of misconduct in public office by Mr Soliman.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal

standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Thammiah committed a criminal offence of aiding and abetting Mr Soliman in his commission of an offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied that Mr Thammiah's conduct is serious corrupt conduct for a number of reasons. The conduct was premeditated and involved significant planning, as demonstrated by the Whatsapp messages between Mr Thammiah and Mr Soliman. Mr Thammiah engaged in this conduct in order to facilitate his and Soliman's continued procurement fraud on RMS and to enable Novation to be awarded much larger procurement contracts than previously.

### Section 74A(2) statements

The Commission is satisfied that Mr Soliman and Mr Thammiah are "affected" persons for the purpose of s 74A(2) of the ICAC Act.

### Samer Soliman

Mr Soliman's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, Mr Singh's evidence, Mr Chehoud's evidence, Novation's email account, and the WhatsApp messages between Mr Thammiah and Mr Soliman.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Soliman for:

- the common law offence of misconduct in public office, arising from his conduct in using his position at RMS to improperly assist Novation to be appointed to the HVM panel
- an offence pursuant to s 87 of the ICAC Act for giving false and misleading evidence in respect of his references to "we" in his WhatsApp communication with Mr Thammiah, in that he only meant Mr Thammiah rather than the two of them when he said "we'll have a full-time job for a few days submitting the Novation tender response" and he meant RMS rather than the two of them when he said "I want Novation on this panel so we can continue procuring"
- an offence pursuant to s 87 of the ICAC Act for giving false and misleading evidence in



respect of his evidence that, when he said to Mr Thammiah in relation to the HVM panel that, "I want Novation on this panel so we can continue procuring", "we" was a reference to RMS, in the sense that it could "continue getting the parts that were urgently needed", rather than to Novation, in the sense that it could continue to procure parts for supply to RMS at exorbitant prices.

tender submission, he wanted to see whether Mr Soliman would take up his suggestion as a way of testing whether he was in fact acting appropriately.

The Commission is satisfied that both matters concern material particulars, namely the nature of the joint corrupt enterprise or scheme and the motivation for Novation's inclusion on the HVM panel respectively, such that consideration should be given to obtaining the advice of the DPP for the prosecution of Mr Soliman for offences against s 87 of the ICAC Act.

Mr Soliman's employment with RMS was terminated for serious misconduct with effect from 26 February 2019. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

## Stephen Thammiah

Mr Thammiah's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, Mr Singh's evidence, Mr Chehoud's evidence, Novation's email account, and the WhatsApp messages between Mr Thammiah and Mr Soliman.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Thammiah for:

- the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office, arising from his conduct in providing Novation's draft submission to Mr Soliman and making Novation's submission to RMS with knowledge of Mr Soliman's preferential treatment, and assisting the acts that led to the commission of an offence by Mr Soliman
- an offence pursuant to s 87 of the ICAC Act for giving false and misleading evidence when he said he made a suggestion to Mr Soliman that they should switch to using Wickr for anonymity because, while he believed Mr Soliman had not "breached probity" and was acting appropriately in helping Mr Thammiah with Novation's

## Chapter 10: “My half” – Mr Soliman’s share of Novation’s profits

This chapter examines the arrangements agreed by Mr Thammiah and Mr Soliman, whereby the latter derived financial benefit from the awarding of RMS work to Novation.

### The financial arrangement

#### The “Steve note” on Mr Soliman’s telephone

Commission officers seized Mr Soliman’s mobile telephone when executing a search warrant at Mr Soliman’s home on 18 October 2018. Located on the telephone was a list titled “Steve pin 8291” (“the Steve note”). This list contained 135 discrete entries of monetary amounts totalling \$347,200 against dates ranging from 6 July 2016 to 9 October 2018.

The first amount recorded, “\$10k cash”, was undated. Most of the monetary amounts listed were for \$2,000, apart from larger amounts of:

- \$25,800, listed on 12 June 2017
- \$17,500, listed on 19 March 2018
- two of \$8,000, listed on 11 July and 14 August 2018.

The dates in the Steve note were grouped into three financial years: from 6 July 2016 to 12 June 2017, from 12 July 2017 to 19 March 2018, and from 11 July 2018 to 9 October 2018. The total amount recorded for the 2016–17 financial year (not including the first, undated \$10,000 cash payment) was \$125,300. The total amount recorded for the 2017–18 financial year was \$139,900. The total amount recorded for the 2018–19 financial year was \$72,000.

The Commission is satisfied that the Steve note indicates a pattern of between \$100,000 and \$150,000 being paid to Mr Soliman each financial year. The Commission has reached that conclusion for the following reasons.

There is a correlation between the withdrawals from the accounts of Mr Thammiah and the entries on the Steve note and corroboration from the WhatsApp messages.

Financial records obtained by the Commission show withdrawals totalling \$347,400 from bank accounts held by Mr Thammiah that correspond with the dates and amounts in the Steve note. The Commission has been able to reconcile the cash amounts in the Steve note, with withdrawals from Mr Thammiah’s bank records for the entire period, to within \$200. The Commission is therefore satisfied that Mr Soliman was recording withdrawals from Novation’s and/or Mr Thammiah’s bank accounts in the Steve note.

The Steve note shows a gap in payments to Mr Soliman between 22 December 2016 and 12 June 2017.

The WhatsApp messages indicate that Mr Thammiah made cash withdrawals for Mr Soliman during this time and the Commission is satisfied from its analysis of bank records, that the large sum of \$25,800 recorded in the Steve note for 12 June 2017 represents the accumulation of those amounts.

The Commission finds that the Steve note is a record of money Mr Soliman received from Mr Thammiah and/or withdrew himself from Novation’s bank account. This is corroborated by the WhatsApp messages exchanged between the two between 24 May 2017 and 17 October 2018.

Via WhatsApp, Mr Soliman and Mr Thammiah regularly discussed the funds Mr Soliman was receiving from Mr Thammiah or withdrawing himself from Novation’s bank account. For example, on 25 May 2017, Mr Soliman asked Mr Thammiah if he was still “on track with the 8k per week withdrawals [sic]”, and offered to take an ATM card for the short term if Mr Thammiah was too busy. Records show that withdrawals totalling \$8,800, \$8,000 and \$9,000 were made from Mr Thammiah’s and Novation’s bank accounts in the weeks beginning 26 May, 5 June and 12 June 2017.

On 12 July 2017, the start of a new financial year in the Steve note, Mr Soliman messaged Mr Thammiah to say, "Need to talk abt [sic] several things about business and also pick up the card from u. Ill start withdrawing".

When Mr Thammiah asked him why he would be withdrawing, Mr Soliman replied that his partner worked near an ANZ Bank branch, so she could withdraw from there. He noted that it was also close to Mr Thammiah's home "so looks legit". Mr Thammiah was concerned that Mr Soliman was involving his partner and responded, "I can withdraw from the ponds and parra".

The Commission's analysis of the location of the withdrawals from Mr Thammiah's and Novation's accounts, which correspond with those recorded in the Steve note, indicate that half were made in Parramatta, where Mr Soliman worked. Withdrawals were also made from The Ponds on 6 July 2016, 26, 27 and 28 September 2016, 1 September 2017, and 2 October 2017 in amounts which reflect the payments recorded in the Steve note.

On 15 March 2018 via WhatsApp, Mr Soliman told Mr Thammiah:

*Bro ive agreed on a price to fix the house with a builder*

*Hes starting tomorrow*

*21k. Ill need \$17,500*

*How soon can u make a withdrawel?*

Mr Thammiah responded that, "we don't take out large sums usually", but that he could start withdrawing money that day and get it all by early the next week. The Steve note records a payment of \$17,500 on 19 March 2018.

As noted above, most of the monetary amounts listed in the Steve note were \$2,000. The Commission finds that the primary withdrawal method used by Mr Soliman was to make small, regular ATM withdrawals of \$2,000.

On 19 September 2018, Mr Thammiah messaged Mr Soliman to say:

*you took 12k out this week. 10k last week. why the rush? They take one pic of your face withdrawing and its over. I don't know the internal audit process. Why take the risk.*

Mr Soliman disputed that amount, responding "Nah. Each week 8k so far". He listed seven withdrawals of \$2,000 each, made between 6 and 18 September 2018, to prove the point and said, "I just withdraw 4 times a week when I'm at work in Parra". The withdrawals he listed are consistent with the record in the Steve note. Mr Thammiah warned Mr Soliman to "take it out slower" and not to use the patterns of the same ATMs on the same days at the same time, describing it as a "game over risk". Mr Soliman indicated that he understood, told Mr Thammiah that he always used different ATMs at different times and listed another three \$2,000 withdrawals made in early September 2018, which are also consistent with the Steve note.

On 14 August 2018, Mr Soliman told Mr Thammiah, "Bro the Louvres will be installed in the week you're away ... can you go into the branch and pull out around \$20k today. Need some funds son".

Mr Thammiah told him he was crazy to suggest taking out that much at once. He told Mr Soliman that, because of the Royal Commission, banks were reporting everything and "trigger a flag" at \$10,000. Mr Soliman responded that Mr Thammiah could pull out \$2,000 daily until the following Monday and with the \$8,000 he should already have withdrawn that week, it may be enough, observing, "Fuck I need to get my name on novation lol".

These conversations are consistent with Mr Soliman and Mr Thammiah knowing they were engaging in wrongful conduct.

Mr Thammiah gave evidence that, when he warned

Mr Soliman in WhatsApp messages that he needed to take out money in smaller amounts and more slowly because of the increased scrutiny by banks of suspicious transactions following the banking Royal Commission, it was because Mr Soliman had told him he could lose his job if it were discovered that Mr Thammiah was lending him money. He agreed that this did not make sense, but that it was what he believed. He denied that he was trying to avoid detection because he knew that what they were doing was illegitimate.

Mr Soliman gave evidence that he did receive money from Mr Thammiah’s and Novation’s accounts as a loan from Mr Thammiah, but disputed the amount claiming that it was only in total \$250,000. The Commission rejects this evidence.

The Commission is satisfied that the Steve note reflects the amount of cash that Mr Soliman received from Mr Thammiah in person and by making his own withdrawals from bank accounts under Mr Thammiah’s control. There is no evidence to corroborate Mr Soliman’s account that he recorded in the Steve note some larger withdrawals made by Mr Thammiah of which Mr Soliman received only a portion. The Commission is satisfied that, between around 13 January 2016 and 9 October 2018, Mr Soliman received \$347,400 in cash from Mr Thammiah’s and Novation’s accounts.

### **\$10,000 cash to “Tim, the Islander with the square jaw”**

The first monetary amount in the Steve note was undated and was for “\$10k cash”. Bank records indicate that, on 13 January 2016, Mr Thammiah withdrew \$10,000 in cash from the same ANZ business bank account into which RMS had paid \$45,870 for the under-vehicle camera project on 21 December 2015 (discussed in chapter 3), which was the first contract Mr Soliman awarded to Novation.

During the public inquiry, Mr Thammiah denied that he gave Mr Soliman \$10,000 in cash as his reward for facilitating the RMS contract awarded to Novation. He said that Mr Soliman asked him for the money to help out a friend of his called Tim, who had helped Mr Soliman during his divorce and who was experiencing financial distress. Mr Thammiah gave evidence that Tim was an “Islander guy with a sort of square jaw” living in a share house. Mr Soliman took Mr Thammiah to Tim’s house and “kind of made it out that I was helping him kind of I guess from an altruistic perspective”. Mr Thammiah said the only reason he gave \$10,000 to Mr Soliman was to help Tim and he thought he would get it back from Mr Soliman.

According to Mr Thammiah’s evidence, not only did Mr Soliman not repay the money, in June 2016, he sought

a larger loan from Mr Thammiah because he was building a house. Mr Thammiah gave evidence that Mr Soliman asked him for that loan after Mr Thammiah had separated from his wife and was vulnerable and Mr Soliman took advantage of the opportunity.

In his December 2018 compulsory examination, Mr Thammiah claimed that, of the \$10,000 cash withdrawal he made in January 2016, he lent Mr Soliman \$7,000 because he was building a house and in “financial stress”. He made no mention of giving money to Mr Soliman to give to anyone called Tim. At the public inquiry, he agreed his evidence differed from that of the earlier compulsory examination but claimed that, when he gave his compulsory examination evidence, he had forgotten the circumstances of the first \$10,000 he gave Mr Soliman. He claimed this lapse of memory was because of his ongoing mental health issues.

Despite significantly changing his evidence about other matters during the last two days of the public inquiry, Mr Thammiah maintained his evidence about giving Mr Soliman \$10,000 to give to “Tim the Islander”.

Mr Thammiah agreed that neither the \$10,000 loan nor the loan Mr Soliman asked for in June 2016 was documented, no interest was payable and there had been no repayment.

When it was put to Mr Soliman by Mr Thammiah’s counsel that he had asked Mr Thammiah for \$10,000 in January 2016 to give to Tim, an Islander in desperate need of assistance, Mr Soliman asked “who the hell is Tim?”. He denied knowing such a person or asking Mr Thammiah for \$10,000 in January 2016. He said that Mr Thammiah had completely made that up.

Given the proximity of the payment of the \$10,000 to the awarding of the first RMS contract to Novation, the Commission is satisfied the \$10,000 was paid to Mr Soliman as his share of Novation’s profit from that contract.

### **The “loan” evidence**

Mr Soliman denied having an agreement with Mr Thammiah to obtain money from RMS for their mutual profit or benefit. His explanation was that he borrowed the money from Mr Thammiah.

He said that Mr Thammiah gave him a loan from funds he received from a property settlement with his ex-wife. Mr Soliman said that Mr Thammiah received a large property settlement and told him the money he was giving to Mr Soliman was “his personal money from his settlement”. Mr Soliman said that he purchased a property some time in late 2016, and in February 2017, submitted a development application to renovate it. He claimed that,



around the time, he bought the land, there was a “kind of a handshake agreement” that Mr Thammiah would give him money from his settlement and Mr Soliman would pay that back.

Mr Soliman acknowledged that the approximate \$200,000 that Mr Thammiah received as a result of his divorce settlement did not come through until some time after the loan commenced, but claimed that, “Mr Thammiah already knew how much was going to come in and he said he also had private funds”, and Mr Soliman had no reason not to trust him. Mr Soliman said that Mr Thammiah told him that he did not need the money he had from his marriage, that he was going to get a settlement, and that Mr Soliman had helped him through a very long and hard period of mental illness. He gave evidence that there was an agreement between them “from the beginning” that he would pay the money back at the end of the house build.

Mr Soliman claimed he already had a loan from the bank for the renovations on his property, but Mr Thammiah offered him the money and he was grateful for it. Mr Soliman said he received about \$250,000 from Mr Thammiah. He said he got the money from ATMs using a card that Mr Thammiah had given him.

He said that the Steve note recorded the amount Mr Thammiah withdrew from his bank each time he gave Mr Soliman cash. He claimed that Mr Thammiah withdrew more than he gave Mr Soliman. Mr Soliman said he kept his own separate record of his share of those cash amounts in Wickr on his laptop. He claimed that he asked Mr Thammiah how much he had withdrawn and the dates of the withdrawals for the record in his telephone, so that he would have a backup for his Wickr record in case he lost his Wickr login, which in fact occurred in around July 2016. He said from then, it became a habit to record both what was taken out by Mr Thammiah and how much he gave to Mr Soliman.

Mr Soliman claimed only to have received a small portion of the early \$2,000 withdrawals listed in the Steve note. However, Mr Soliman’s financial records show that 10 withdrawals, made between 22 July and 17 August 2016, correspond with deposits of \$2,000, and sometimes slightly more, into Mr Soliman’s personal bank account on the same dates as those in the Steve note.

Mr Thammiah’s evidence on whether the funds represented a loan to Mr Soliman was confusing and inconsistent. Mr Thammiah gave evidence that the money he gave Mr Soliman, “for me [it] had the pretext of the loan but it was all false”. Mr Thammiah agreed that the funds that Mr Soliman received came from Novation’s profits. When it was put to Mr Thammiah that he knew he would never be repaid by Mr Soliman any of the cash he received from Novation’s profits, Mr Thammiah responded:

*...I also acknowledge that there was never any repayments, and as far as I could tell, there wasn’t going to be as well ...*

*I think the loan was just a fake construct to facilitate something. It wasn’t a loan.*

On the second-last day of the public inquiry, Mr Thammiah gave evidence to the effect that, around mid-2016, he and Mr Soliman had a conversation in Mr Soliman’s bedroom at his parents’ house, where he was living at the time. Mr Soliman told him that he wanted to pay the contractors who were building his house in cash so that he could get a discount. He told Mr Thammiah that he thought he was entitled to at least half of the money Novation was earning from RMS. Mr Thammiah was worried that this was wrong and asked Mr Soliman whether it was legal or valid. Mr Soliman assured him it was “completely legal because I haven’t breached probity and I won’t”.

It was agreed they would refer to the payments as a loan so that Mr Thammiah could “legally” pay him that half of Novation’s earnings to which he was entitled. Mr Thammiah gave evidence that there was no discussion about Mr Soliman paying back the money he received, but rather about Mr Soliman working for Novation at some later stage, “and sort of recouping those costs”; although he conceded that that was never a serious discussion. Mr Thammiah said he accepted this arrangement, disregarded the consequences and trusted in their friendship.

Mr Thammiah told the Commission that, at the start, he believed the payments made to Mr Soliman were part of a loan but, by mid-2017, he acknowledged that it was not a loan and, at that point, he did not care.

Mr Thammiah gave evidence that, at the time that the Commission executed search warrants at his and Mr Soliman’s home, of the significant funds then remaining in Novation’s bank accounts, he believed at least half of that money was Mr Soliman’s.

However, when cross examined by Mr Soliman’s counsel later that day, Mr Thammiah agreed that he had instructed his solicitors to issue a letter of demand to Mr Soliman on 1 August 2019, during the public inquiry, for an amount of \$347,200, based on the Commission’s figure as to what Mr Soliman had received in cash payments. The letter of demand stated that Mr Thammiah had provided Mr Soliman with a loan for this amount to enable the purchase and renovation of a property, and that loan was to be repayable on completion of those renovations and/or from the sale of the property. The letter noted that, the renovations having been completed, the funds paid pursuant to the loan were due within seven days of the letter.

Mr Thammiah said he believed there was a loan to Mr Soliman and that he believed his loan to Mr Soliman “still exists”. The Commission rejects that evidence.

Submissions made on behalf of Mr Thammiah contended that, in the WhatsApp messages, Mr Soliman repeatedly requested funds from Mr Thammiah in relation to the construction of his house and, in doing so, he stated, “Thanks for helping bro ... got me out of a serious jam”.

It was submitted that, if the arrangement was that Mr Soliman was entitled to a share of monies generated from Novation, then the pretext of needing money to renovate was unnecessary. The existence of the justification for needing money supports the inference that the money was a loan, or at least represented to Mr Thammiah to be a loan in order to obtain funds from Mr Thammiah.

In rejecting this submission, the Commission notes that, in the particular instance cited, Mr Soliman was not thanking Mr Thammiah for a loan, but for helping him withdraw a large sum of money quickly to pay Mr Soliman’s builder. The context of the messages does not indicate a loan, but the need for Mr Soliman to access a larger portion of his money faster than the usual slow and methodical method of withdrawing to avoid detection. As Mr Thammiah noted, “we don’t take out large sums usually”.

Mr Thammiah’s evidence about the loan was inconsistent and self-serving. On the one hand, he gave evidence that there was a loan, and that it still existed, in order to justify the letter of demand. On the other, he gave evidence that his need for a friendship with Mr Soliman and his belief and trust in that friendship meant that he wanted the loan to be real but he knew that the pretext of the loan was false and there was no loan. Ultimately, his evidence was that he did not care whether the money he gave Mr Soliman was or was not a loan because money was not important to him. This evidence in itself was inconsistent with the letter of demand issued at his instructions in the course of the public inquiry.

The Commission finds that Mr Thammiah tried to hedge his bets and that the letter of demand was issued at his request to create evidence of a loan because he knew that a loan, while still improper, was more legitimate than sharing equally in Novation’s profits with the public official responsible for awarding RMS contracts to Novation.

Nowhere in the hundreds, if not thousands, of WhatsApp messages obtained by the Commission between 24 May 2017 and 17 October 2018 do Mr Soliman and Mr Thammiah discuss, let alone mention, a loan or any arrangement whereby Mr Soliman owed money to Mr Thammiah or his business that would eventually need to be repaid. There is no contemporary, documentary evidence of any loan. The Commission is satisfied that the payments to Mr Soliman were not in the nature of a loan.

## Splitting the profits 50/50: short-term “income”

Mr Soliman submitted that what he was doing was improperly assisting a friend to make money. It was contended that, while Mr Thammiah provided what were termed “substantial loans” to Mr Soliman, the timing and amounts of these were quite unconnected with any activity on Mr Soliman’s part or any transactions between Mr Thammiah, Novation and/or RMS.

This was in contrast to the evidence given by Mr Thammiah. When it was put to Mr Thammiah on the second-last day of the public inquiry that the position was that Mr Soliman was to derive half of Novation’s profits after tax, Mr Thammiah responded, “I don’t think it was after tax, I think he just put the perception that he should be entitled to half and I agreed in many respects, yes”.

On the final day of the public inquiry, Mr Thammiah gave evidence that, when Mr Soliman told him in mid-2016 that he was entitled to “at least half”, he took that to mean half of what Novation earned. When it was put to Mr Thammiah that of the millions of dollars earned by Novation from RMS, Mr Soliman did not get anything like half, Mr Thammiah responded, “I think if you look at the amount of money that he got during the time that he could get money, then he got well more than half”.

Mr Thammiah said that, obviously, he could not give Mr Soliman any money after the Commission executed the search warrants on their homes in October 2018. However, from the start of their arrangement in mid-2016 to October 2018, withdrawing \$2,000 in cash at a time, slowly and methodically, Mr Soliman “got as much as he wanted”.

On 26 July 2017, in the context of a continuing discussion about Mr Soliman’s plans to continue working with Mr Thammiah to increase earnings for Novation and continue business together “beyond scales”, Mr Soliman told Mr Thammiah:

*Im gonna withdraw **my half** from the CURRENT balance so if you can help me get it better from ur settlement for the house that would help me heaps obviously. But at the same time if ur not comfortable with that, thats your call but ill just take me longer to get the cash out which is a mission.* (Emphasis added).

The inference that there was an agreement between Mr Soliman and Mr Thammiah whereby they would share the income from Novation is strengthened by the WhatsApp exchange on 5 October 2017, when Mr Soliman told Mr Thammiah that he had withdrawn money that day. He said he had not checked the balance since the week before, but thought it must be close

to zero and asked Mr Thammiah to transfer another \$20,000. Mr Thammiah responded, "That's the last of the half btw. 100 total for this year".

Mr Soliman asked whether Mr Thammiah had done the sums himself to conclude that this was "half" or whether he had received the balance from the accountant. Mr Thammiah told him, "I just halved what was left after tax ... 140 each, that's why 100 ... 40% tax ... the company tax was the killer".

The evidence is that the arrangement between Mr Soliman and Mr Thammiah proceeded according to the financial year and was subject to review. On 4 July 2017, around the start of the new financial year, Mr Soliman told Mr Thammiah "Gotta talk about a few things. Plan for scale orders etc". On 23 August 2017, Mr Soliman told Mr Thammiah that his director had given him the "green light" for the scales tender, "so we're good from all sides for the next 3 financial years". On 7 June 2018 via WhatsApp, Mr Soliman told Mr Thammiah, "Chat tonight about financials tonight [sic]. We gotta plan for the next financial year". The Steve note in Mr Soliman's telephone organised the cash payments it recorded into financial years.

The limit on the money that Mr Soliman took from Novation in any given financial year is consistent with the inference that what he was taking was "income" that Mr Thammiah drew from Novation, of which Mr Soliman was entitled to half. On 8 October 2017 via WhatsApp, Mr Soliman told Mr Thammiah, "I can give ur card back this the last batch of withdrawels [sic] this year so dobt [sic] need it anymore". The Steve note indicates no further cash payments were received from October 2017 to 19 March 2018, when the WhatsApp evidence indicates Mr Thammiah withdrew multiple amounts to make up the \$17,500 that Mr Soliman told him he needed to pay a builder.

In another WhatsApp message, sent on 26 July 2017, Mr Soliman advised that he was waiting on the balance from the accountant so that he could take his half. Mr Thammiah responded that he would let Mr Soliman know that balance:

*But still take out money*

*No point waiting for Tan [accountant] also*

*He will come back with something*

*And u won't exceed that limit by then.*

Mr Soliman responded, "Lets just find the balance from tan. We'll review the balance and im going to clear my half".

On 10 October 2018, Mr Thammiah told Mr Soliman that new keycards were coming. Mr Soliman told him:

*Whatever card u give me ... I wont [be] pulling out large chunks anymore*

*No need right now*

*Maybe 2k a week*

*Too much of a hassle pulling out 4 times a week.*

Mr Thammiah's response was telling, "Your money. Up to you".

It was put to Mr Soliman that this message indicated that what was in the Novation account was equally his money. Mr Soliman responded:

*I don't know about that. I mean, like I said, he's already agreed that the loan he was going to give me is the loan he was going to give me.*

## **Splitting the profits 50/50: plans for a long-term joint venture**

Mr Soliman's financial interest in Novation's business was not limited to receiving half of Novation's profit. Rather, it included an equal interest in Novation's overall growth and profitability as a business. The evidence indicates that Novation was just as much his business as Mr Thammiah's, albeit he was a covert or silent partner.

The WhatsApp messages are replete with examples of the way in which Mr Soliman considered Novation as much his business as Mr Thammiah's, and Novation's profits as much his as well.

On 26 July 2017 via WhatsApp, Mr Soliman asked Mr Thammiah whether he was still interested in "working together beyond the scales" and reassured him that it was okay if he wanted to do it on his own. Mr Soliman messaged Mr Thammiah that he had done a bit of research into cannabis growing and said:

*I think that's the best idea*

*\$2M capital should be our goal*

*Now ... the plan*

*I think we should focus on the scales business as primary. So, im committed to growing this business here and nationally over the next 6 months. I just need u to meet the managers in each state once i sell the idea*

*The rest of the work is mine to do. For scales. Basically, my goal is to earn \$2M for novation.*

Mr Thammiah told him he agreed but noted that, "the margins we make won't be anywhere near nsw". Mr Soliman told him they would be if he had his way and to that leave that to him, telling him he would soon

be leading the program nationally. Mr Soliman told Mr Thammiah there was still a huge market for scales and that his target was to “replace all 600 scales”.

When Novation was selected as the winning tenderer for the procurement of 425 scales, Mr Soliman sent Mr Thammiah a screenshot of his and his manager’s sign-off and said, “were [sic] golden!”. He told Mr Thammiah he expected the executive director’s approval in the next couple of days and “then we party”.

On 12 September 2018, after Novation had won the tender to supply RMS with 425 scales and had placed the order for scales with IRD, Mr Thammiah told Mr Soliman via WhatsApp:

*3 mill approximately for the scales ... Jesus christ  
the exchange rates a bitch atm and getting worse ...  
every cent it falls is like a couple grand.*

Mr Soliman did some calculations and worked out that the scales and chargers would in fact cost Novation approximately AUS\$2.5 million and noted, “We still did very well”.

During the public inquiry, Mr Soliman agreed that the point of this discussion was to work out how profit would be derived from what RMS would pay Novation for the supply of 425 scales, and he agreed that a reading of the messages indicated that, of the approximately \$6.9 million that Novation charged RMS, it had only paid IRD \$2.5 million, and they had done very well out of that. He agreed that the profit was an extraordinary amount of money but said he did not remember whether they talked about Mr Thammiah offering him any money from it. He denied that he was referring to both himself and Mr Thammiah having done very well, saying, “Like I said, “we” means, you know, I’m happy for him”.

Mr Thammiah gave evidence that the plan to raise money for a hemp or medical marijuana growing business “was a sort of pie-in-the-sky sort of mentality that kept me going more than anything. It wasn’t real”. He agreed that the goal was for the profits to be derived from Novation’s business with RMS to be put to a particular purpose, but said that the reality was that the profits were just there for Mr Soliman. He said that Mr Soliman and he both had a financial interest in Novation, but that Mr Soliman’s was greater.

## Conclusion

The Commission is satisfied that there was an agreement between Mr Soliman and Mr Thammiah whereby the profits earned by Novation from RMS work would be shared between them. The evidence indicates that

Mr Thammiah and Mr Soliman considered the money earned by Novation, between around late 2015 until the Commission’s execution of search warrants at their homes in October 2018, was theirs to be divided in equal parts. This agreement is consistent with the evidence of the contemporaneous WhatsApp messages and the Steve note.

This did not mean that it was split equally immediately as it came into Novation’s bank account from RMS, and that cash was withdrawn to the value of 50% by Mr Thammiah and given to Mr Soliman. The agreement, which the Commission has inferred from the available evidence, was more complex. It involved Mr Soliman’s short-term access to cash *from his half* of Novation’s profits in each financial year to build his house. Mr Thammiah had access to Novation’s profits by way of an “income” allocated to him in each financial year, was looking for investment opportunities for his short-term share of the profits, and there was also a long-term plan for them both to use what remained as capital for a joint venture, potentially involving a medical marijuana business.

The Commission is satisfied on the available evidence that the agreement between them did not mean that money was paid to Mr Soliman from Novation’s bank account in a way that correlated with specific RMS contracts Mr Soliman awarded to Novation. Rather, there was an overarching arrangement between them to grow Novation’s business through Mr Soliman’s influence at RMS and to share the profits *over time* in an equal 50/50 split after the company’s payment of tax. Each took money from the account as needed, in equal amounts, and each understood they retained a 50% share in the funds that remained in that account.

The Commission is satisfied that the evidence, set out above, indicates that approximately \$300,000 a year from Novation’s earnings was designated “income”. Mr Soliman got close to his half of this amount in the financial years 2016–17 and 2017–18, and was on his way to doing so again in 2018–19 before the conduct was exposed and stopped.

There was also a concurrent, long-term arrangement between Mr Thammiah and Mr Soliman to share Novation’s profits beyond the annual income they derived, which reflected their equal interest in Novation as a business. The Commission is satisfied that, from the start of the 2017–18 financial year, Mr Soliman was intent on developing plans for a joint venture for Novation involving licensed cannabis growth. With Mr Thammiah’s agreement, the goal was to earn \$2 million from Novation’s licence to distribute IRD’s scales and parts, and to use as capital for their medical marijuana venture. The WhatsApp messages and Mr Thammiah’s



own evidence corroborate the shared interest of the two friends in Novation as a business, both in relation to its work for RMS and in relation to their plans for future business ventures.

## Corrupt conduct

### Mr Soliman

Between January 2016 and October 2018, Mr Soliman received cash payments totalling \$347,200 from Mr Thammiah in person, or via his own withdrawals from Novation's account. These payments represented the immediate financial advantage obtained by Mr Soliman.

Mr Soliman's conduct is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act, as it is conduct of a public official that constitutes or involves the dishonest or partial exercise of his official functions.

His conduct is also corrupt conduct for the purpose of s 8(1)(c) of the ICAC Act because it is conduct that constitutes or involves a breach of public trust, in that Mr Soliman exercised his public official functions for corrupt motives, namely, personal financial benefit, rather than in the public interest.

For the purpose of s 9(1)(a) of the ICAC Act, the conduct could constitute or involve a criminal offence under s 249B(1) of the Crimes Act.

- (1) *If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit—*
- (a) *as an inducement or reward for or otherwise on account of—*
- (i) *doing or not doing something, or having done or not having done something, or*
- (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
- in relation to the affairs or business of the agent's principal, or*
- (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*

*the agent is liable to imprisonment for 7 years.*

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that, Mr Soliman's conduct

could constitute or involve an offence or offences pursuant to s 249B(1)(a) of the Crimes Act.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman had committed an offence or offences under s 249B(1)(a) of the Crimes Act. Accordingly, the Commission is satisfied that the requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied, for the purpose of s 74BA of the ICAC Act, that this is serious corrupt conduct because the conduct took place over a significant period of time, namely between January 2016 and October 2018. It involved actual payments of \$347,200 and the intention to equally share later profits of over \$2 million, which did not occur only because of the Commission's investigation. Mr Soliman was clearly motivated by greed and self-interest. As a manager, he held a position of trust within RMS and his conduct involved a significant breach of that trust and could have impaired public confidence in public administration. Further, as stated, the conduct could involve an offence (or offences) pursuant to s 249B of the Crimes Act, which have a maximum penalty of seven years imprisonment, meaning that they are serious indictable offences.

### Mr Thammiah

Mr Thammiah made cash payments, or enabled Mr Soliman to withdraw cash, to the total value of \$347,200 from Novation's accounts as a result of Mr Soliman exercising his public official functions to improperly favour Novation in the awarding of RMS contracts.

This conduct on the part of Mr Thammiah is corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act. This is because it is conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Soliman's functions.

For the purpose of s 9(1)(a) of the ICAC Act that the conduct could constitute or involve an offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Thammiah committed an offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act. Accordingly, the Commission is satisfied that the requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied, for the purpose of s 74BA of the ICAC Act, that this is serious corrupt conduct because the payments were made to Mr Soliman with the intention of influencing Mr Soliman, a public official, to continue to use his position at RMS to favour Mr Thammiah's company in its dealings with RMS. The conduct endured for more than three years, was premeditated, and involved a significant level of planning. It involved the actual payment of a significant amount of money and plans for the payment in future of an equal share in millions of dollars of profit. The conduct could involve an offence or offences under s 249B(2) of the Crimes Act, which has a maximum penalty of seven years imprisonment, meaning it is a serious indictable offence.

## Section 74A(2) statements

The Commission is satisfied that Mr Soliman and Mr Thammiah are "affected" persons for the purpose of s 74A(2) of the ICAC Act.

### Samer Soliman

Mr Soliman's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, Novation's financial records and emails, the lists of cash payments from Mr Thammiah recovered from the mobile telephone seized from Mr Soliman's house during the execution of the search warrant, and the WhatsApp messages between Mr Thammiah and Mr Soliman.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Soliman for an offence under s 249B(1)(a) of the Crimes Act of, between January 2016 and October 2018, corruptly soliciting and

receiving benefits, and agreeing to receive benefits in the future, on account of using his position in RMS to award contracts to Novation and otherwise to favour Novation in relation to the affairs or business of RMS.

As Mr Soliman's employment with RMS was terminated with effect from 26 February 2019, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

### Stephen Thammiah

Mr Thammiah's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, Novation's financial records and emails, the lists of cash payments from both Mr Thammiah and Mr Hamidi recovered from the mobile telephone seized from Mr Soliman's house during the execution of the search warrant, Mr Hamidi's evidence and, in particular, the WhatsApp messages between Mr Thammiah and Mr Soliman.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Thammiah for an offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of corruptly giving a benefit to Mr Soliman on account of Mr Soliman showing favour to Mr Thammiah and Novation in relation to the affairs or business of RMS, or the receipt of or expectation of which would tend to influence Mr Soliman to show favour to Mr Thammiah and Novation in relation to the affairs or business of RMS.

## Chapter 11: “I’ll rig it” – Novation wins the tender to replace 125 RMS scales

This chapter examines the circumstances in which Mr Soliman arranged, in March 2018, for Novation to win a tender, worth about \$2 million, to supply 125 portable weigh scales to RMS.

### Background to the 125 scales tender – funding

By the end of 2017, the RMS Compliance Branch had made repeated, unsuccessful submissions over several years to fund the replacement of RMS’s portable weigh scale fleet. The RMS fleet consisted of approximately 550 units of the PAT/SAW 10A series I and II model of scale, which had reached the end of their lives, were failing and were no longer in production.

On 22 September 2017, in an email to Mr Hayes, his senior manager, Mr Soliman suggested that approximately \$8.5 million would be required by way of capital expenditure to replace the 550 scales. He suggested that approximately \$5.5 million would be required by way of operating expenditure to refurbish the existing scales to return them to “as new” condition and extend their lives by 20 years, and that this option would also provide a \$3 million cost-saving.

Mr Soliman was asked to prepare a procurement plan that examined both options; namely, repair of existing scales and procurement of new scales.

On 1 November 2017, Mr Soliman provided his outline for both options, proposing a total cost of between \$6.9 million and \$8.1 million for the replacement of 588 scales across the financial years of 2017–18 and 2018–19, and a total cost of between \$2.95 million and \$4.1 million for the repair of the existing 588 scales in the same period. He advised that RMS had not gone to market since the scales were purchased over 20 years ago, and his costings for replacement were therefore just an estimate.

RMS decided to replace the existing scales with new scales.

On 16 November 2017 via WhatsApp, Mr Soliman told Mr Thammyiah of this decision:

*what this means is that we go to open tender...with strict requirements for the size of the scales (to fit into the current slots)... and we know [sic] only the PAT scales fit*

*And all done legit*

*No risk.*

Over the next couple of days, the following WhatsApp exchange took place between them:

- Mr Soliman considering which model of PAT scale “we should sell for the tender ... I don’t wanna recommend the 10c if we make much less profit”
- Mr Thammyiah noting that, “the profit margin is up to us”
- Mr Thammyiah recommending that, “we should customise the scales” to give them longer handles and better wheels
- Mr Soliman proposing that, “we can’t charge more than the 10a price i think ... its already high”
- Mr Soliman instructing Mr Thammyiah to see whether customisations of the 10A would be possible at the same price on an order of a minimum of 100 scales that financial year
- Mr Soliman advising, “we’ll need to see how many scales can be bought for \$2M this financial year ... so i can set the tender to suit us”.

On 20 November 2017 via WhatsApp, Mr Soliman told Mr Thammyiah:

*My tender will specify that the scale must fit into existing vehicle setup*

*So ... PAT scales only fit*

*Boom.*

Mr Soliman asked Mr Thammiyah to find out the name and specifications of the PAT charger plug and charging unit and to ask IRD to issue a letter stating that the PAT charger only worked with PAT scales and that plugging in other scales was not safe. Mr Soliman told Mr Thammiyah, “That’s all I need to deal [sic] the deal ... the rest leave to me. I’ll rig it accordingly lol”.

On 21 December 2017 via WhatsApp, Mr Soliman advised Mr Thammiyah that:

*Tender for scales will happen week of 8th Jan btw.  
\$ in the bucket today. Ready to roll. Make sure you  
keep that whole week free to work on the submission  
and pricing.*

It is evident from the above that, from the time in 2017 that he was asked to prepare a procurement plan for new weigh scales, Mr Soliman’s efforts were directed towards favouring Novation. This included the provision of confidential RMS budget information to Mr Thammiyah.

### **“I can set the tender to suit us” – the tender criteria**

On 3 January 2018 via WhatsApp, Mr Soliman advised Mr Thammiyah:

*...you’ll need to speak to IRD asap to see when you  
can deliver the scales*

*It’s a big tender \$2M ... So u need to keep in mind  
I cant protect you if something happens this time  
cause scales haven’t arrived or whatever ...*

*I’ll draft the RFQ to suit the delivery date as much as  
I can ... but it Def has to be less than ... 3 months.*

Two days later, on 5 January 2018, he told Mr Thammiyah he was still working on the RFQ and asked him to get the electrical output specifications of the scales charger and photos of the charger port from IRD as soon as possible, saying, “This will ensure novation wins. Get this asap pls bro”.

On 17 January 2018, Mr Soliman told Mr Thammiyah that the tender would be out that day. He said:

*I’ll make sure novation wins and gets the tender.  
Are you still cool with our agreement? So there’s no  
headaches again? ... I want to drive to the idea we  
had last night also. I’ll make sure u get the license  
for 3 years minimum ... then we sell novation to  
accuweigh middle this year.*

Also on 17 January 2018, Mr Singh, as RFQ manager, issued an RFQ for the procurement of 125 portable weigh scales to the five contractors appointed to category B of the HVM panel. The closing date for responses was 31 January 2018.

The scope of services and requirements was set out in Schedule 1 of the RFQ. Relevantly, these included:

- 125 scales delivered to RMS within 90 days of the work order being executed
- maximum dimensions for width x length x height – 670 mm x 520 mm x 42 mm (Mr Jones gave evidence that the “width” and “length” dimensions specified in the RFQ were back to front)
- wheels – required with wheel brackets chamfered on both upper and lower faces
- handle depth to be between 100 mm and 140 mm
- scale type – static
- must be certified (NMI or NATA) for mass enforcement in NSW
- tenderer shall supply evidence that nominated scale model or previous models have a usable life span of a minimum of 10 years
- tenderer must be an authorised distributor in NSW for the nominated scale model
- the tendered scale needed to be able to be charged and connected to an in-vehicle charging port with a six-pin charger, a photograph of which was included in the RFQ.

On 29 January 2018, Mr Thammiyah asked Mr Soliman about the “price point”. Mr Soliman told him \$15,000 per scale as “that’s what I’ve based this funding request off”. Mr Thammiyah asked whether Mr Jones, operations manager for the RMS Sydney West sector, would see the price and whether it might affect his decision. Mr Soliman confirmed that he would, but that Mr Jones, “will have no choice ... Because you should be the only one that meets the criteria”.

On 30 January 2018, Mr Thammiyah noted that there was a requirement in the RFQ to provide evidence that the scales were capable of being used for at least 10 years. Mr Soliman said:

*I put that in there to make sure we win*

*All you have to do is list the countries/states that have  
used PAT scales longer than 10 yrs*

*Obviously NSW is one*

*BOOM!*



Clearly, Mr Soliman manipulated the tender criteria to suit his goal. He wanted RMS to procure at least 100 units of a modified version of the PAT/SAW 10 A series III scale supplied by Novation for approximately \$15,000 per scale.

### Mr Jones “kicks up a stink”

On 29 January 2018, Mr Jones emailed Mr Singh, copying Mr Soliman and his own manager, Mr Jenkins, to say that he had just had time to read the RFQ “clinically” and wondered whether there would be a separate tender for charging units and leads. Mr Singh responded that the RFQ requirement was for the scales to fit into the current charging port and that, if the tenderer wished to provide new chargers, it would be at their own cost. Mr Jones replied that he understood, but the problem was that the specification in the RFQ was for a six-pin connection, which would be incompatible with RMS’s current charging units.

Mr Soliman gave Mr Thammiah a “heads up” on WhatsApp the following day:

*David Jones is kicking up a stink that the current chargers aren't compatible with new scales*

*So ... In your tender response you must state that you are providing your chargers free of charge ...*

*Say that you understand it is not part of the requirements but are including free of charge to ensure the guarantees life of the scales etc etc*

*And that the 10a III still fits the current/old charger port*

*Cause that's a requirement of the tender.*

On 31 January 2018 via WhatsApp, Mr Soliman told Mr Thammiah:

*U sent the wrong charger info lol ...*

*You sent the pics of the chargers for the new scales ...*

*David Jones complained*

*Said the tender isn't valid*

*Night [sic] need to go to tender again ...*

*We're extending the tender to next Friday ...*

*So we can amend the requirements for chargers ...*

*So we can charge for chargers now.*

On 31 January 2018, the closing date for the RFQ was extended to 9 February 2018 because of amendments to the charger requirements. Those amendments removed the requirement for a six-pin connection and provided

maximum dimensions of the required charger and leads and the requirement of one charger per vehicle with six charging leads to charge all six scales.

On 1 February 2018 via WhatsApp, Mr Soliman advised Mr Thammiah that the updated RFQ was about to be issued for scales procurement and he instructed him to put the quote for chargers on a separate line to the scales.

On 3 February 2018, Mr Soliman got married. On 5 February 2018, Mr Soliman told Mr Thammiah to let him know if he needed help with Novation’s quote, noting, “I’m only here at work this week to make sure this tender goes through ... I’ll be in the tender review board also”.

On 9 February 2018, the day the RFQ closed, Mr Soliman told Mr Thammiah:

*Anyway its all set for this tender, My job is done lol.  
Fark watta slog for 2 yrs*

*Over to you son*

*We'll talk aboit specific [sic] about how I'll get cash from you later on once we've jumped this hurdle.  
\$2-\$4k per week is still reasonable. But we'll talk later.*

Mr Thammiah agreed, saying “lets smash this out”, and wished Mr Soliman a good honeymoon.

Later on that day, Mr Soliman messaged Mr Thammiah to say that Nepean Transport (“Nepean”) had just submitted their quote for the Intercomp LP600 and told him that, while it technically met the requirements for dimensions, the submission did not respond to all of the requirements, including the longer handle, and said “Jai will disqualify them based on that”.

Mr Soliman told Mr Thammiah that he had spoken to Mr Singh, and “told him to evaluate not just on price”, but basically according to what Mr Jones said he wanted. Mr Thammiah told Mr Soliman that Mr Jones had already indicated him that he wanted the PAT scale, “so should be golden”, and Mr Soliman agreed that it was, “all good ... Wont be an issue”.

On 10 February 2018, Mr Soliman informed Mr Thammiah that they could not open the tender submissions because not all the TEC members were there and that they would be opened on the following Monday, 12 February 2018. Mr Soliman told him, “Don’t worry we cant lose this. Even if we do, I don’t have to accept any quote for any reason I like”.

Clearly, Mr Soliman assisted Mr Thammiah with the preparation of Novation’s tender submission.

## The three tender responses

Novation, Accuweigh and Nepean responded to the RFQ and submitted quotes.

On 9 February 2018, Mr Thammiah submitted Novation's quote for 125 units of the customised "Australian special" SAW 10A III. The response noted, relevantly, that the new customised static scale:

- met the size requirements with dimensions of 518 mm (width) x 470 mm (length) x 42 mm (height) without the handle, and was within 2 mm of the overall dimension requirements with a length of 808 mm, when 810 was the maximum length, 520 mm the maximum width and 42 mm the maximum height in the tender specifications
- had wheel brackets chamfered, as specified
- had a handle depth of 140 mm.

Novation's response also noted that:

*PAT IRD scales have been used in NSW for 25 years, as a testament to the quality of our Swiss manufacturing standards. We also have strong track records in Poland, Korea, USA, Canada, Taiwan, Spain, Germany etc.*

Mr Thammiah quoted \$15,000 per scale and \$2,400 per charger; totalling just over \$2.1 million for 125 scales and 21 chargers.

In its response to the RFQ, Accuweigh put forward two models of the Intercomp scale, the LP600 and the LP788. The LP600 had been in use since 2005 and the LP788 was a newer model, released in 2017 and still undergoing approval. Neither model had NMI approval, but both could be NATA certified.

The overall dimensions of the LP600 were given as 762 mm (length) and 406 mm (width). The overall dimensions of the LP788 were 940 mm (length) and 394 mm (width). The LP600 scale therefore met the overall dimension requirements of the RFQ with the inclusion of the handle length, whereas Accuweigh's LP788 scale was too big. The price quoted for the LP600 was \$6,842 per scale.

Nepean's response to the RFQ also proposed the LP600, at \$6,259 per scale.

## The first tender evaluation

On 22 January 2016, Mr Soliman informed Mr Jones that he had been appointed to the TEC "to decide which of the scale models best fits your business" and asked Mr Singh to ensure this was arranged. The members of the TEC were Mr Singh, Mr Jones, Mr Everson and Ms Lemarechal.

All TEC members signed conflict of interest declarations, asserting that they had no financial or other personal interest in the project, or any association with any person expected to tender for the project. At the beginning of February 2018, Mr Singh attended Mr Soliman's wedding, at which Mr Thammiah was also a guest, and he was well aware of the close friendship between Mr Soliman and Mr Thammiah. Notwithstanding this fact, on 12 February 2018, he declared that he was not aware of any situation that might lead to an actual or perceived conflict of interest, or which might affect him carrying out his functions both fairly and in RMS's best interest.

Mr Singh gave evidence that the quantity of 125 scales for the RFQ was derived by dividing the \$2 million budget by the average cost of scales he was given by Mr Soliman, namely \$13,000 to \$15,000. He said he did not know much about scales and their cost and he trusted Mr Soliman's advice on the matter.

On the basis of what Mr Soliman had told him about average cost, Mr Singh was expecting all of the scales proposed in the tender submissions received to fall within that price range. He noticed, however, that the only scale that fell within that price range was Novation's, while the rest of the scales were less than half that price range. He said he tried to find the price of IRD's scales in the RMS database or online, but could not find this information anywhere. He said that it occurred to him that Mr Soliman was "friends with Novation. So that was bothering me as well at that time".

He gave evidence that, around the same time, he happened to bump into his friend, Ali Hamidi, at the gym and he raised the concern with him. He said:

*I told him what was going on. I told him about the significant price difference and I just, I asked him is it possible that something could be going on here between Samer and Steve. And he told me at that time that can't be possible because Samer is no longer talking to Steve. Apparently there was some personal issues between the two. So when I heard that I thought, okay maybe I'm just overthinking this.*

He said that, when Mr Soliman returned to work, he raised concerns with him about paying \$2 million upfront to Novation for this procurement and Mr Soliman agreed with the proposed payment milestones of 50% upfront and 50% on delivery. Mr Singh said that Mr Soliman told him he also did not trust Mr Thammiah enough to pay him upfront and Mr Singh said he was guessing that this related to whatever personal problems they were having at the time.

Mr Singh said that he did not raise his concerns about collusion with anyone in RMS because Mr Hamidi was a trusted friend and he therefore trusted what he had told

him about a rift in the relationship between Mr Soliman and Mr Thammiah. He said he did not raise his concerns with Mr Soliman because it was a “big accusation to make” and, if it were not true, it would have a big impact on his relationship with his manager.

Mr Singh acknowledged that he should not have signed a conflict of interest declaration to the effect that he was not aware of any situation which might lead to an actual or perceived conflict of interest. He said that he did so because of a “misunderstanding” on his part about the nature of conflicts of interest, and that he now understands this, following probity and ethics training. He acknowledged that he could have gone to his acting manager while Mr Soliman was away and said that he was aware of the friendship between Mr Soliman and Mr Thammiah, and that Mr Thammiah’s company was about to be awarded a \$2 million contract.

The Commission does not accept that Mr Singh misunderstood the nature of a conflict of interest until he had done further probity and ethics training. At this time, he had been exposed to the requirements of conflict of interest declarations through his involvement in the PSC panel tender and the TEC for the HVM panel. He had undertaken recent refresher code of conduct training, which had a conflict of interest component, by that time.

Ms Lemarechal told the Commission that during the meeting, Mr Singh provided them with a number of documents, including a conflict of interest declaration and a list of the approximately 10 tender requirements. She said that the evaluation process was similar to that which took place in relation to the PSC panel tender evaluation she had been involved in and she saw no abnormalities.

Ms Lemarechal stated that the tenders, other than Novation’s, offered scales that did not meet the dimension requirements of the RFQ and she understood that those requirements, having been based on the existing set-up of the inspectors’ vehicles, would involve the refurbishment of the inspectors’ vehicles, were they to change.

Ms Lemarechal agreed that the size requirement for the scales in the RFQ restricted the options that could be selected, but said that the restrictions seemed “normal”, if it meant the cost of refurbishing the inspectors’ vehicles could be avoided. She was also concerned that the other scales were heavier than Novation’s offering. Dimensions, weight and a 10-year lifespan were the requirements they were required to take into account. She said that, even though the Novation scales were the most expensive, she considered that there was no point buying cheaper scales that could not be used because they were not a size that would fit the existing set-up of the inspectors’ vehicles.

Mr Jones gave evidence that there was a weight criterion

in the documentation used to assess the tender responses, requiring the proposed scale to be 18 kilograms or lighter, or no heavier than the scales currently in use by RMS; namely, the modified PAT 10A III, which was the scale offered by Novation’s tender response. The weight of the LP600 was 23 kilograms and the weight of the LP788 was 17 kilograms. Mr Jones said that, ultimately, the LP600 scale was excluded because of its weight; the inspectors wanting the lightest possible scale. The LP788, although an ideal weight, was rejected because of the fact that it was uncertified and unapproved.

The Commission did not have available to it the 10 evaluation criteria used by the TEC to score the tender submissions. However, the evidence of Ms Lemarechal and Mr Jones and the reference to weight in the tender evaluation report indicate that weight was a criterion against which the proposed scales were assessed, even though it was not a criterion in the actual RFQ.

On 13 February 2018, Mr Singh sent a draft tender evaluation report to the TEC members for review and signing.

The draft tender evaluation report set out a score out of 10 and a commentary on the response of each tenderer to the RFQ’s criteria. Nepean received a score of 1, Accuweigh a score of 2 and Novation a score of 8. There was no distinction made in the tender evaluation report between the two models of scale proposed by Accuweigh; namely, the LP600 and the LP788. The report stated that the nominated scale offered by both Accuweigh and Nepean (which was the LP600) would not fit into the current scale racks installed in inspectors’ vehicles and that fabricating new racks to cater to these scales was not an option, as the new racks would not fit into the vehicles either. In fact, the evidence indicates that the LP600 did meet the dimension requirements.

In addition, the proposed scale was noted to be 8 kilograms heavier than the scales currently being used by RMS. Accuweigh was noted to be an authorised supplier of its proposed scale, whereas Nepean was not. It would seem from the evaluation report that the LP788, which was the lightest scale on offer, was not even in consideration at this point because of its uncertified and unapproved status.

By contrast, the draft report determined that Novation’s nominated scale would fit into current vehicle racks and met all of the requirements outlined in the RFQ: the nominated scale weighed the same as the scale currently in use by RMS, evidence had been supplied of previous models having a usable life span of at least 10 years, and Novation was an authorised distributor in NSW. The preferred tenderer “on a value for money basis”, despite the substantially more expensive scale it

proposed, was therefore Novation. The primary reason given in the report for excluding the tender submissions of Nepean and Accuweigh was that their scales could not be stored in the scale racks currently fitted in RMS inspectors' vehicles.

Mr Singh gave evidence that Novation's price of almost \$2 million was determined to be "best value for money" because Nepean was not an authorised distributor and the scales offered by Accuweigh were not certified or approved, and Novation was therefore the only supplier left.

### Mr Jones cries foul

Mr Jones was not involved in the preparation of the RFQ before it went out and he objected to it as soon as he saw it:

*The parameters for the dimensions of the scale required meant that there was only one company who was going to win it. I set those parameters. I had told them what the dimensions were when I gave my feedback that the ideal scale was the 10A's with the 10C handle and changed wheels. They had sent the tender out with those exact dimensions. But I had not meant for this feedback to be the specifications for the tender. Instead of setting the tender to require a scale within certain dimensions, they set the tender to meet the exact dimensions of the 10A with a 10C handle. The only scale that could meet those specifications was the PAT. I cried "foul" as soon as I saw the tender.*

During his evidence in the public inquiry, Mr Jones reiterated his evidence that the exact dimensions in the RFQ were for the PAT scale with the long handle for which he had asked Mr Soliman.

On 14 February 2018, Mr Singh emailed Mr Jones to ask him whether he had had a chance to review the evaluation report. The next day, Mr Jones sent an email to Mr Singh, copying his fellow TEC members and other senior RMS personnel, advising, "I am worried that the Scale Requirements, especially the Dimensions, were too restrictive and narrowed the field accordingly – in essence only one model could meet the requirements".

Mr Jones advised Mr Singh that he had re-measured the current scale racks in the inspectors' vehicles and had determined that the racks *could* accommodate scales with larger dimensions than the RFQ dimensions. He had done some internet research and discovered there were numerous scale manufacturers. He had also conversed with Mr Walker, who told him a scoping project had recently been carried out on the suitability of scales, "results unknown".

Mr Jones also told Mr Singh that, in considering costs, a current scale rack costs \$1,800 (plus fitting) so that, if a brand of scale was found to suit RMS needs at the most economical price, installing another rack, if necessary, would not be insurmountable. He recommended that:

*...an evaluation of scales should be undertaken (providing this has not been facilitated already during the "Scoping Project") where interested manufacturers or distributors supply scales for in-field testing, then depending on the results a new RFQ could be developed and distributed.*

Of course, as discussed in chapter 6, AZH had submitted its invoice on 9 January 2018 and been paid on 29 January 2018 for the field trial and scoping study of three modern portable weigh scales; namely, models of the HAENNI, Intercomp and PAT brands. The Commission is satisfied that the trial did not occur and the report for it was never provided to RMS.

On 21 February 2018, Mr Singh emailed Arnold Jansen, senior manager of compliance monitoring, to explain that, of the three submissions recently received in response to the RFQ for the procurement of 125 scales, two had met the requirements of the RFQ adequately, but only one had met the scale dimension requirements. Due to the significant difference in cost between the submissions, with Novation's quote being just under \$2 million and the two options proposed by Accuweigh, being for \$775,000 and \$1,135,000, respectively, (excluding GST), the team had sought indicative costing to replace the storage racks in inspectors' vehicles, to see whether savings would be made if the tender were awarded to Accuweigh.

Mr Singh advised that, even with an approximate \$300,000 cost to replace the racks, both options proposed by Accuweigh would provide significant savings compared to Novation's submission and the additional money would enable RMS to invest in additional scales to replace the current fleet. Mr Singh sought clarification as to whether the cost of replacing the storage racks could be considered within the funding scope of the procurement RFQ. If not, the TEC would proceed with its recommendation to award the tender to Novation.

On 22 February 2018, Mr Singh sent an email to Mr Jones, Ms Lemarechal and Mr Everson, advising that the scale dimension was no longer considered a mandatory requirement for the RFQ and that, as a result, Accuweigh's submission would be reviewed and given a new score.

On 21 February 2018, while Mr Soliman was away on his honeymoon, Mr Thammiah sent him a WhatsApp message, saying he had not yet heard anything about the tender. Mr Soliman told him to contact Mr Singh for feedback and asked Mr Thammiah to let him know, saying, "I can stop the process if something went wrong



... just need to know asap. And I can't exactly call jai now and ask. Looks too dodgy".

On 23 February 2018, Mr Thammiah told Mr Soliman that Mr Singh had said they were still evaluating the tender responses. Mr Soliman surmised that something had happened. He told Mr Thammiah that he would be back at work mid-March.

On 28 February 2018, Mr Jones wrote to his fellow TEC members, saying, emphatically, that he would not be signing the tender evaluation report. He said that the RFQ was too restrictive with the dimensions and that other submissions were unable to meet these specifications. He noted that, even though both of Accuweigh's Intercomp scale models were more economical, even with the need for new storage racks, they could not be considered because both models had not been evaluated and the LP788 was still undergoing certification, as well as failing to meet the RFQ requirements. He considered that, until alternative scales were evaluated, "an accurate, fair & honest assessment cannot be made".

On 6 March 2018, during a meeting with two senior managers, Mr Jones outlined his concerns about the RFQ being too narrow, in that "it was the exact specification for one particular make and style of scale and nothing else", and he said that for that reason he was not prepared to sign the tender evaluation report. He gave evidence that both managers said words to the effect, "Look, we need to get this sorted, DJ, and you need to sign the thing". He said their request was in the nature of "coercing" him, in that they were telling him he had to sign because, if he slowed the process down, they would not get the funding and they would not get the scales before the end of the financial year.

Following this meeting, Mr Jones sent Mr Singh an email, copying a number of senior managers, including Mr Soliman. In his email, he advised that, following a consultation process, an agreement had been reached and the TEC's recommendation of Novation should proceed in this instance. He noted that the RFQ required specific scale dimensions, but that this aligned with the current scale racking system fitted to most RMS enforcement vehicles and enabled a "speedy supply process in order to replace a large number of current scales failing in service and representing uneconomical repair costs". Mr Jones went on to say in his email that, in the event that funding was provided for the replacement of the remainder of the scales, evaluation should be conducted of other scale models prior to any subsequent RFQ being issued.

Mr Jones signed the tender evaluation report on 7 March 2018, and the other TEC members did so the following day.

On 12 March 2018, his first day back at work following his honeymoon, Mr Soliman messaged Mr Thammiah via WhatsApp to say that the process had been halted as he had suspected and that "they chose the intercomp scale". This did not accord with the fact that the evaluation report, recommending Novation as the successful tenderer, had by then been signed by all members of the TEC. He claimed that he had stopped the process and was meeting with his executive director that day to reverse the decision.

Mr Soliman told Mr Thammiah that it was lucky he had come back that day and that he would get approval for the contract that week. He also warned Mr Thammiah not to trust Mr Jones, saying he had been the one who had picked the Intercomp over PAT, stopped the process and refused to sign the report. Mr Soliman told him that Mr Singh said Mr Jones had made a huge issue over the weight of the PAT scales, saying they were too heavy.

A little later, Mr Soliman told Mr Thammiah that it was all sorted:

*Putting my ass on the line though. Exec director wanted assurances from me that whoever I pick will have the scales within 3 months max*

*I pinky promised her and she let me select whoever I want. So novation is in.*

The Commission accepts that, during the procurement process for the 125 scales, there are many examples in the WhatsApp messages of Mr Soliman exaggerating his authority and capacity to alter outcomes and of lying to Mr Thammiah. The Commission accepts that Mr Soliman appeared to be trying to engender a sense of indebtedness on Mr Thammiah's part when doing so. This often occurred just before Mr Soliman asked Mr Thammiah to withdraw cash for him.

Mr Soliman told Mr Thammiah that the tender documents would be signed that day and instructed him to speak to Mr Malhotra as soon as possible and tell him to start manufacturing.

## **RMS pays for 125 scales from Novation**

On 15 March 2018, Mr Soliman advised Mr Thammiah that Novation's tender had been accepted by RMS and asked him to provide a formal quote. The following day, Mr Thammiah submitted Novation's quote numbered "204.1" for \$2,117,940, requiring 50% on purchase and 50% on delivery.

That day, Mr Singh created a PO request, naming Mr Soliman as the requester and Melinda Bailey, executive director of compliance and regulatory services, as the delegate with approval to request the release of

funds. Mr Soliman asked Mr Singh to put himself as the requestor, sign the request, print and forward it to Ms Bailey, and forward Mr Soliman the email, so that he could “keep tabs” on the executive director’s response.

On 23 April 2018, Mr Thammiah issued an invoice for 50% of the total quote, being \$1,058,970, and, on 4 June 2018, this amount was paid to Novation by RMS. On 7 June 2018, Mr Thammiah issued an invoice for the second 50%, which was paid on 15 June 2018.

The WhatsApp messages between Mr Soliman and Mr Thammiah indicate that, between approximately 15 March and 20 April 2018, with Mr Soliman’s knowledge and guidance, Mr Thammiah was negotiating with IRD to reduce its wholesale price for Novation. The messages indicate that Mr Soliman’s primary concerns were that the scales arrive on time and that Mr Thammiah not incriminate him by revealing that he had been discussing pricing with Novation.

Mr Thammiah’s clear aim was to increase Novation’s profit by decreasing the amount he had to pay IRD. Mr Soliman was also concerned about the amount of profit Novation was going to make, and, on 27 March 2018, encouraged Mr Thammiah to let Mr Malhotra know that, if he did not drop his prices, “all future tenders are in jeopardy”.

Financial records indicate that of the nearly \$2,118,000 paid by RMS to Novation, Novation paid IRD a considerably smaller amount, thereby allowing Novation to make a substantial profit.

## Mr Soliman disputes his involvement

When Mr Soliman was first called to give evidence, he claimed he had “nothing to do with” the tender of 125 portable weigh scales, that he was not in the country, and that, even during that time, his friendship with Mr Thammiah was “at a distance”. He said that Mr Singh was responsible for managing the tender process.

He denied that he lined up the price and what Novation would charge. He denied seeking funding based on the unit price that he and Mr Thammiah wished to charge RMS, or telling Mr Thammiah what the available budget was and determining that 125 scales would exhaust that budget.

Mr Soliman was re-called to give evidence at the public inquiry, after the Commission had accessed the WhatsApp messages between him and Mr Thammiah. He then agreed that he had communicated with Mr Thammiah via WhatsApp in relation to the procurement. Confronted with relevant WhatsApp messages, Mr Soliman:

- maintained his evidence, that the size requirements in the RFQ came from the inspectors and that he did not set them
- denied that he used his position to ensure that Novation made as much profit as possible
- claimed that his use of the word “rig” in relation to the tender meant “set” or “establish”
- maintained his evidence, that he must have let the available budget of \$2 million “slip out” when he was talking to Mr Thammiah
- agreed that, contrary to his earlier evidence, that he did not find out how much Mr Thammiah was charging per scale until the subsequent tender for 425 scales, he must have known Novation’s scale price before this
- agreed he “generally” spoke with honesty and candour in the WhatsApp messages he sent Mr Thammiah
- admitted that he “crossed the line between friendship and helping a friend’s business”
- agreed that he sent messages to Mr Thammiah about the tender while he was on leave
- disagreed that he manipulated the tender by setting size restrictions that only Novation’s PAT scale would satisfy
- claimed that it would cost a lot of money to change the racks in the inspectors’ vehicles and the users wanted the PAT scale in any event
- denied that the scale dimensions were even a critical factor in the tender
- denied that his purpose, as evidenced by a number of his WhatsApp messages to Mr Thammiah, was to “rig” the tender and do what was necessary to ensure Novation won.

Ultimately, Mr Soliman insisted that Novation’s scale was the scale that everyone wanted and, in the WhatsApp messages, he was guessing it was the one that was going to win anyway, as the “best product”. There were other scales that fit the specifications and could have won, but the best scale won.

Mr Thammiah was taken to the WhatsApp messages relevant to the procurement of 125 scales. He gave evidence that he believed that Mr Soliman was pursuing the best scale for RMS and helping a friend at the same time. He agreed that, if that was the case, Mr Soliman did not have to “rig” the tender as Mr Soliman was telling him he was doing. However, he denied that he was a willing participant in this process.

He agreed that Novation's quote was prepared to match the budget Mr Soliman had told him was available and that he discussed with him what price Novation should charge per scale. Mr Thammiah also agreed that he checked with Mr Soliman what would be an acceptable price for the scale chargers and that, with Mr Soliman's help, he ultimately charged whatever was likely to fit the total available budget.

Mr Thammiah agreed that the only reason Novation won the tender was because of his friendship with Mr Soliman. He agreed that he understood that Mr Soliman was setting the criteria so that Novation could satisfy them and win, and that he had changed his evidence from previous occasions when he had said that he was not aware that Mr Soliman was setting the tender requirements to favour Novation.

While the Commission accepts that Mr Soliman was not in the country at the time the tender was evaluated, it does not accept that this meant he was not involved in the tender. The evidence set out in this chapter establishes that Mr Soliman rigged the tender process in Novation's favour, and that Novation was ultimately the only possible choice for the evaluation committee and RMS, just as he had intended.

The Commission is satisfied that, because of Mr Soliman's "rigging", Accuweigh was Novation's only competitor. Because of his "rigging", there had been no evaluation of the Intercomp scales it offered; one of which was uncertified and unapproved, in any event, and the other, significantly heavier than Novation's scale. Because of his "rigging", the only scale Mr Jones had ever evaluated was the one Novation offered and, as Mr Soliman knew, he was happy enough with it. Faced with the prospect of losing the funding and any chance of new scales with it, if he did not sign the tender evaluation report, Mr Jones did not really have a choice.

The Commission rejects the submission made on Mr Thammiah's behalf, that the only conclusion available on the evidence is that Novation "legitimately" secured the tender for the provision of 125 scales because the LP600 and LP788 were not superior to the IRD scales, and that the provider of HAENNI scales did not tender for the HVM panel. The Commission finds that Mr Thammiah used information to which he was not entitled and had the assistance of Mr Soliman, which he should not have utilised, to prepare a tender submission for a tender he knew had been created to suit the scale he was proposing. He had almost no competition because of Mr Soliman's efforts, and he stood to make a significant profit by setting his prices to exhaust the available budget that he should not have known, and charging RMS for chargers that IRD had provided to him at no cost. He was a willing participant in all of Mr Soliman's efforts to secure the tender for Novation.

## Corrupt conduct

### Mr Soliman

Mr Soliman misused his position as manager of the RMS HVP Unit to favour Novation by manipulating RMS's processes for a tender worth over \$2 million for the procurement of 125 portable weigh scales.

Mr Soliman's conduct is corrupt conduct for the purposes of s 8(1)(b), s 8(1)(c), s 8(1)(d) and s 8(2A) of the ICAC Act.

It is conduct which involves the dishonest and partial exercise of his official functions. His dishonesty and improper purposes are laid bare in his communications with Mr Thammiah on WhatsApp.

It is conduct which involves a breach of public trust. Mr Soliman held a managerial position and his responsibilities included delivery of the heavy vehicle portable weigh scale program. His official functions included oversight of the tender processes, even if he was not on the TEC. He was required to always have in mind the need to ensure that RMS received best value for money. However, he exercised his functions for extraneous reasons; namely, his friendship with Mr Thammiah and to enhance the prospect of receiving a personal benefit. His friendship was a motivating force in his partial exercise of power.

It is conduct which involves the misuse of information acquired by Mr Soliman in the course of overseeing the tender process, and divulged to Mr Thammiah to his benefit, including, in particular, the available budget.

It is conduct that impairs public confidence in public administration and involves dishonestly obtaining the payment or application of public funds for private advantage.

For the purpose of s 9(1)(a) of the ICAC Act, the common law offence of misconduct in public office is relevant, the elements of which are set out in chapter 3 of this report.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman had committed an offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is also satisfied that Mr Soliman's conduct could constitute or involve a disciplinary offence or reasonable grounds for dismissing him or otherwise

terminating his employment under s 9(1)(b) and s 9(1)(c) of the ICAC Act. Mr Soliman's misconduct involved serious breaches of the code of conduct, that would warrant the termination of his employment. It involved the dishonest and improper use of his position and the unauthorised disclosure of confidential information to provide a benefit to his friend's company, and ultimately himself. It involved a significant undisclosed conflict of interest. It involved not obtaining the best value for money for RMS but, rather, the biggest profit for Novation.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman engaged in conduct that constitutes or involves a thing of the kind described in s 9(1)(b) and s 9(1)(c) of the ICAC Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied, for the purpose of s 74BA of the ICAC Act, that this is serious corrupt conduct. It involved a senior public official rigging the requirements of a \$2 million tender to favour his friend and obtain a significant financial benefit for his friend and himself. It involved frustrating the objectives of RMS's procurement processes so that RMS's procurement of 125 portable weigh scales was not conducted on a competitive or merit basis, was skewed in favour of a company whose prices demonstrably far exceeded those of its competitors, and therefore did not represent the best value for money for RMS or the taxpayer. It involved dishonest, unethical and unfair conduct in relation to the procurement processes of a government agency and denied legitimate businesses, which were Novation's competitors in the market, an opportunity that should have reasonably been extended to them to make a tender submission, and/or to have their tender submissions fairly evaluated. The conduct could involve the offence of misconduct in public office, which is a serious offence for which the maximum penalty is at large.

## Mr Thammiah

On 9 February 2018, Mr Thammiah, in agreement with Mr Soliman, submitted a response to the RMS RFQ for the procurement of 125 portable weigh scales, knowing that Mr Soliman had misused his position as manager of the RMS HVP Unit to favour Novation in the tender process.

The WhatsApp messages between Mr Thammiah and Mr Soliman, from October 2017 onwards, demonstrate that Mr Thammiah was aware of the essential facts constituting the improper exercise by Mr Soliman of

his official functions for reasons of partiality towards Mr Thammiah and Novation.

Mr Thammiah's conduct is corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act because Mr Thammiah's conduct adversely affected the honest or impartial exercise of official functions by Mr Soliman.

For the purpose of s 9(1)(a) of the ICAC Act, Mr Thammiah's conduct could constitute or involve a criminal offence of aiding and abetting the commission of an offence of misconduct in public office by Mr Soliman.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Thammiah committed a criminal offence of aiding and abetting the commission of an offence of misconduct in public office by Mr Soliman. The Commission is satisfied that a tribunal of fact could infer that Mr Thammiah knew that the tender process was weighted in his favour and did not constitute a fair and competitive process, both because of his friendship with Mr Soliman and because Mr Soliman had a share in the profits earned by Novation from RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied that Mr Thammiah's conduct in relation to the RFQ to procure 125 scales is serious corrupt conduct. Mr Thammiah knew that what Mr Soliman was doing in favouring Novation was wrong. He assisted Mr Soliman to partially and dishonestly exercise his official functions to favour Novation to win a tender involving the expenditure of significant public funds. He knew that the tender process had been manipulated to eliminate as far as possible any competition from Novation and, therefore, without open and effective competition, that RMS would not achieve best value for money. Mr Thammiah did not act independently and honestly in submitting Novation's tender response, but rather aided and abetted Mr Soliman in his misconduct because he was motivated by the desire for Novation to win the tender by whatever means, however improper. If proved on admissible evidence, Mr Thammiah's conduct could involve an offence of aiding and abetting the commission of an offence of misconduct in public office for which the maximum penalty is at large.

## Mr Singh

The Commission accepts the submission made on behalf of Mr Singh that he had no idea about the scheme between Mr Soliman and Mr Thammiah to manipulate and exploit the tender process to ensure that Novation's



was the winning tender. There is evidence of Mr Soliman's active deception of Mr Singh. There is also evidence of Mr Singh's actions in trying to explore other options for RMS, including installing new racks in inspectors' vehicles, to address Mr Jones' concerns about the restrictive nature of the tender. The fact that he was not asked by Mr Soliman to manage the subsequent tender strengthens the Commission's finding that he did not know of or participate in the collusion between Mr Soliman and Mr Thammiah.

However, the Commission does not accept the submission that Mr Singh was "acting with integrity and probity during this procurement". The Commission is concerned with some of Mr Singh's conduct; namely, he did not declare the obvious conflict of interest he was obliged to bring to the attention of the procurement branch, namely the friendship between Mr Soliman and Mr Thammiah.

The Commission is satisfied that Mr Singh partially and dishonestly exercised his official functions by recommending Novation as the winning tenderer for a contract valued at over \$2 million, when he knew that Mr Soliman, who had drafted the tender requirements, was a very close friend of Mr Thammiah's. Mr Singh also knew that Mr Jones had serious concerns that the tender requirements were drafted very restrictively and apparently to favour the scale Novation offered. Mr Singh had his own concerns about the significant price difference between Novation's tender and those of its competitors. Nevertheless, he did not declare a conflict of interest and he did not report his own suspicions to the procurement branch, as he was obliged to do.

The Commission is satisfied that there is no evidence that Mr Singh benefited in any way from the choice of Novation as the winning tenderer, and there is insufficient evidence that he deliberately favoured Novation by ruling out the tenders of its competitors. However, the Commission is satisfied that, when Mr Singh declared he was not aware of any situation which might lead to an actual or perceived conflict of interest or which might affect him carrying out his functions both fairly and in RMS's best interest, he knew that the friendship between Mr Soliman and Mr Thammiah was such a situation. The Commission is satisfied that, in accepting Mr Hamidi's assertion that Mr Soliman and Mr Thammiah were "distant" at that time, Mr Singh effectively turned a blind eye to whether Mr Soliman had improperly favoured Novation because of his own friendship with Mr Soliman.

Mr Singh's conduct, in evaluating Novation's tender submission and recommending Novation as the winning tenderer without making a declaration of a conflict of interest, is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act because it is conduct that involves the partial and dishonest exercise of his official functions.

The Commission is satisfied that, for the purpose of s 9(1)(c) of the ICAC Act, Mr Singh's conduct constitutes or involves reasonable grounds for dismissing or otherwise terminating his services. His conduct, in not disclosing his knowledge of the personal connections between himself, Mr Soliman and Mr Thammiah and his own concerns that Novation may have been the subject of preferential treatment in the tender, particularly as Mr Singh was convenor of the TEC, would amount to substantial breach of the applicable RMS code of conduct and conflict of interest policy. Mr Singh had undertaken relevant code of conduct training.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Singh engaged in conduct that constitutes or involves a thing of the kind described in s 9(1)(c) of the ICAC Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied that Mr Singh's conduct is serious corrupt conduct for the purpose of s 74BA of the ICAC Act. His conduct is serious from a disciplinary perspective. He was the convenor of the TEC, which was a position of trust. The value of this tender was significant. The consequence of Mr Singh not disclosing a conflict of interest – his and Mr Soliman's – was serious. Had Mr Singh made the disclosures he was obliged to make, to senior managers within RMS, rather than to a friend of his and Mr Soliman's, who was himself involved in similarly corrupt conduct at that very time, the corrupt conduct concerning Novation may have been uncovered and stopped earlier than had ultimately occurred. Mr Singh was motivated and influenced by his friendship with, and absolute loyalty to, his manager and friend Mr Soliman, which he prioritised over his obligations to RMS and the public interest.

## Section 74A(2) statements

The Commission is satisfied that Mr Soliman, Mr Thammiah and Mr Singh are "affected" persons for the purpose of s 74A(2) of the ICAC Act.

### Samer Soliman

Mr Soliman's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including

RMS records, Novation's email account, the evidence of Mr Jones and Mr Singh, and the WhatsApp messages between May 2017 and July 2018 between Mr Soliman and Mr Thammiah.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Soliman for:

- the common law offence of misconduct in public office in partially and dishonestly favouring Novation to win the tender for the procurement by RMS of I25 scales
- offences against s 87 of the ICAC Act in respect of his evidence:
  - that he had nothing to do with the I25 scales tender
  - denying that he deliberately set the tender requirements to suit Novation
  - that, when he said in a WhatsApp message "I'll let you know if we're \$2M richer in a few hours", he meant he was happy if Mr Thammiah won the tender because they were so close.

Mr Soliman's employment with RMS was terminated for serious misconduct with effect from 26 February 2019. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

## Stephen Thammiah

Mr Thammiah's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other

admissible evidence that would be available, including RMS records, Novation's email account, the evidence of Mr Jones and Mr Singh, and the WhatsApp messages between May 2017 and July 2018 between Mr Soliman and Mr Thammiah.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Thammiah for the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office, as described above.

## Jainesh (Jai) Singh

Mr Singh's employment with RMS was terminated with effect from 16 May 2019. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

## Chapter 12: “We’re golden son!” – Novation wins the tender to supply 425 scales

This chapter examines the circumstances of the final RMS contract awarded to Novation, valued at over \$7 million, for replacement of the remaining 425 scales.

### Setting the tender for 425 scales

#### Getting rid of the competition

On 26 April 2018, Mr Soliman sent Mr Thammiah a message on WhatsApp saying, “Time to work the bureaucracy for the next tender”.

On 11 May 2018, Mr Soliman told Mr Thammiah that \$7 million had been granted for the procurement of the remaining scales.

As discussed in chapter 11, Mr Jones was interested in the Intercomp LP788 scale and he did not have the chance to evaluate the scale before the previous tender for the procurement of 125 scales. He had raised concerns when he saw that the tender requirements for the procurement of 125 scales appeared drafted to suit only the modified PAT/SAW 10A III scale and he believed that, until alternative scales could be evaluated, “an accurate, fair & honest assessment cannot be made”. Mr Jones had considered the Intercomp LP788 likely to be, by far, the best and most economical available option, if he could only have a chance to test it.

On 11 May 2018 via WhatsApp, Mr Soliman told Mr Thammiah that he would be trialling the Intercomp scale with Mr Jones in the coming week. Mr Soliman said:

*I’ll be getting videos and photos on the trial day for the scoping study which will ensure the PAT scale is recommended ...*

*Really wanna break the intercomp ...*

*Which will seal the tender for us.*

On 24 May 2018, Mr Soliman sent Mr Thammiah a photo of the Intercomp scale he was trialling with Mr Jones and told Mr Thammiah that Mr Jones was already unhappy with them and that everyone was already saying “PAT is the way to go ... so basically ... tender is done and dusted”.

The day after the scales trial, Mr Soliman sent an email to Mr Jones, advising that his overall impressions were that he was satisfied with the new SAW 10A III scale design and the quality of the modifications and that it had performed well under weighing, with no obvious issues. By contrast, Mr Soliman observed that the Intercomp LP788 scales seemed to have a much lower build quality, had obviously had silicone applied to the weigh pad surface since coming from the factory and had got stuck after just the second weigh. He said that he suspected the scales would not last too long in the field and seemed awkward to move around as well.

Mr Jones responded that he concurred with Mr Soliman’s observations and noted that the SAW 10A III met all current requirements.

#### Setting the tender requirements

Neither Mr Singh nor Mr Jones, who had both been members of the TEC for the previous scales tender and who had expressed and acted on concerns about that tender process, was asked to be involved in the subsequent procurement process. Mr Singh gave evidence that Mr Soliman told him Mr Lee would be managing the process. Mr Lee was a project engineer in the HVP Unit, who reported to Guido Zatschler, who in turn reported to Mr Soliman.

On 8 June 2018 via WhatsApp, Mr Soliman advised Mr Thammiah that \$5 million had been approved for the coming financial year for scales procurement. At \$15,000 a scale, Mr Soliman said “we can get 333 so ill prob request 325 scales in the tender”.

On 14 June 2018, Mr Soliman sent Mr Lee the RFQ used for the previous 125 scale procurement. He told him, "you need to translate these same requirements into a RFT for the procurement of 300 portable weigh scales. Can you please get started in creating the RFT documents?"

On 18 June 2018, Mr Soliman sent Mr Lee feedback about the PAT, Intercomp and HAENNI brands of portable weigh scales, which he said were then being trialled. Mr Soliman told Mr Lee that the Intercomp and HAENNI scales had been poorly received by users for various reasons, but that the IRD/PAT scales "have received excellent reviews so far in the trial". He asked Mr Lee to keep this in mind for the tender and informed him that it was "critical to create the RFT to look at all aspects such as proven durability etc, and not just price".

On 18 June 2018 via WhatsApp, Mr Soliman asked Mr Thammiah whether he had obtained information from IRD about how many "states around the world can he say that has had PAT scales for 10+ years ... so i can put that as a requirement for the tender". Mr Soliman asked Mr Thammiah for the dimensions and weight of the modified SAW 10A series III scale and asked him to send the specification documents to his gmail address. He told Mr Thammiah the tender would be commencing within a month.

Early on 20 June 2018, Mr Soliman chased Mr Thammiah up for the same information about scale durability and Mr Thammiah told him that IRD could only give him a list of the countries that had purchased PAT scales, but could not guarantee what had happened during their use or whether they were still in use. Mr Soliman told him that that was good enough and that Novation just needed to list those countries, reminding Mr Thammiah:

*Ill be running the tender remember ... So just need it to tick a box ... Im goibg [sic] to list that evidence of 10 states or countries using the product is required.*

Mr Soliman then sent Mr Thammiah a screenshot of the tender requirements to show his wording for the durability criterion included:

*Tenderer must advise at least 10 states or countries around the world which have used the tendered scales for 10+ years. Failure to provide this will result in the submission being invalid.*

Mr Soliman also told Mr Thammiah that day that:

*at this stage, by my calculations, we should charge \$15800 per scale*

*300 scales*

*Equals approx. \$4.75M*

On 20 June 2018 via WhatsApp, further discussion ensued about the tender requirements Mr Soliman would set to favour Novation. These discussions included Mr Soliman:

- asking Mr Thammiah to find out from IRD what standards its scales were built to so he could include that in the tender
- asking Mr Thammiah to find out how long IRD would need to deliver 300 scales, Mr Thammiah suggesting that would be closer to six months than the 90 days allowed in the previous tender, and asking for as long a lead time as possible (they settled on 150 days)
- advising he was asking about delivery times because he was "trying to rule out haenni" because those scales were also well made and "prob same as PAT"
- telling Mr Thammiah he had sent the specifications to his gmail address for him to read over and "if you're happy, let me know and ill move forward"
- telling Mr Thammiah that he had added a requirement for the scale to be a maximum weight of 18 kilograms and "that rules out the haenni which is 20kg".

Later in the morning of 20 June 2018, after the WhatsApp communication set out above, Mr Soliman sent Mr Lee an email with the "updated requirements for the RFT". These requirements included:

- delivery within 150 days of contract execution
- a maximum weight of 18 kilograms
- advice from the tenderer that the tendered scale had been used in at least 10 states or countries around the world for 10+ years (failure to provide this was said to render the submission invalid)
- dimensional drawings of the scale, showing a maximum width of 810 mm, including the handle, maximum length of 520 mm, maximum height of 45 mm, and chamfered wheels and a handle of between 100 mm and 140 mm (failure to provide this was said to render the submission invalid).

The required dimensions were those, to within 2 mm, of the modified SAW10A III supplied by Novation, as were the wheels, handle and weight requirements.

The Commission is satisfied that Mr Soliman, in communication with Mr Thammiah and with his input, set the following criteria to favour Novation:



- evidence of use in at least 10 highway agencies around the world for at least 10 years (this would exclude Accuweigh)
- weight of no more than 18 kilograms (this would exclude HAENNI)
- delivery within 150 days (this would exclude HAENNI)
- scale dimensions and weight equating to those of the modified PAT 10A III
- the delivery of 425 scales and 70 chargers, so that, at \$15,800 per scale, Novation's bid would exhaust the available budget.

On 5 July 2018, during a WhatsApp conversation about the tender requirements, Mr Soliman confirmed the price that Mr Thammiah had charged per scale in the previous tender for 125 scales, and told him:

*I done the math*

*\$15800 is our price*

*That takes me 10% over my budget which is good...*

*Working with consultants for a couple weeks then ill know the exact terms*

*Im aiming for a 1st august release date of the RFT online...*

*OK were rock solid*

*A miracle will mean we lose this...*

*Lots of risk with me running it but fuck it ... im getting this done for us.*

Mr Thammiah suggested that Mr Soliman get Mr Singh to run it again. Mr Soliman said, "Jai's not running this tender. I am. So alls up to me. Not risking it".

On 16 July 2018 via WhatsApp, Mr Soliman told Mr Thammiah that the \$4.7 million funding had increased to \$7 million for the tender. He asked Mr Thammiah to contact IRD and see how long they needed to manufacture approximately 450 scales.

Mr Soliman sought clarification whether the \$15,000 per scale charged last time had included chargers and delivery. Mr Thammiah advised that these had been separately costed, and Mr Soliman responded:

*I gotta rejig the tender requirements then ... Ask for less scales*

*450 is based on \$15800 including charhers [sic] and delivery ... So, the question is, with a \$7M budget at approx \$15800 per scale EXCLUDING chargers and delivery, how many scales should I tender for? ...*

*Its all up to me ... I can still change it ...*

*425 scales x \$15800 each = \$6.7M*

*Leaves at least 300k for chargers and delivery fees*

*425 scales would need 70 chargers.*

Mr Thammiah told Mr Soliman that, in the previous tender, the cost per charger was \$2,400 and delivery was included. Mr Soliman calculated:

*So that's \$170,000 for chargers*

*Takes us to 6.9M*

*Add \$100k for delivery*

*Takes us to \$7M exc delivery ... Ok ill tender for 425 scales.*

Mr Soliman conceded in the public inquiry that, in these messages, he was "looking maybe for what number we need to tender for, yeah, but that's obviously not, not, not right".

Mr Chehoud told the Commission that he met with Mr Soliman and Mr Lee to receive a briefing so that he could prepare the procurement documents for this open tender for RMS. Mr Chehoud recalled that Mr Soliman gave him a verbal briefing about the required specifications, based on which WSP prepared written specifications.

Part of the tender documentation that Mr Chehoud helped put together was the tender evaluation plan, including the selection criteria weighting. On 6 July 2018, he, Mr Soliman and Mr Lee met to discuss this and other issues. That day, via WhatsApp, Mr Soliman informed Mr Thammiah that the tender would have three criteria for assessment; namely, durability (weighted at 50%), ability to deliver (weighted at 40%) and price (weighted at 10%). Mr Soliman told Mr Thammiah that, in addition to these weighted criteria, "the pre-requisites for the max dimensions and modifications needed will mean that basically all submissions will be excluded cause they wont meet the pre-requisites".

The Commission does not accept the submission made on behalf of Mr Thammiah that the "actual effect of the tender criteria on excluding tenders was insignificant to none". By weighting price at only 10%, and weighting durability (assessed primarily by reference to the 10 highway agencies criterion), Mr Soliman set a tender that minimised Novation's particular weakness – namely, value for money – and maximised what he knew was Accuweigh's weakness: that the US was the only international jurisdiction in which it could demonstrate long-term use. Had Accuweigh's scale been certified, which was a matter outside Mr Soliman's knowledge and control, those criteria would have made the difference.

The weighted selection criteria in the draft tender evaluation plan sent on 17 July 2018 by Mr Lee to Mr Soliman were the same as the those advised to Mr Thammiah by Mr Soliman. In addition, the mandatory selection criteria – failure to meet any of which would render the tender excluded from further consideration – were as follows:

- pricing
- tenderer must be the authorised distributor in NSW for the nominated scale
- compliance with the schedule 2 performance specifications including dimensions.

### Bypassing an open tender – the procurement strategy

On 29 June 2018, Mr Soliman advised his manager, Mr Jansen, that there were two options to procure the portable weigh scales that financial year. One option was to run an open tender, which Mr Soliman claimed would involve an approximate six-month timeframe before a contract was awarded. The second option was to gain an exception to bypass the tender process based on a set of so-called “exception reasons” in the procurement manual that Mr Soliman claimed applied to the current procurement, namely:

- insufficient time to conduct a formal tender process because of an immediate requirement
- absence of competition for technical or policy reasons
- the experience, expertise, type and/or quality of goods or services required is only available from a single supplier.

In justifying why each of these exception reasons was applicable in the present circumstances, Mr Soliman used the opportunity to advocate for Novation without mentioning it by name. He claimed that there was an immediate need to procure the scales because the lack of functional portable weigh scales increased the risk of over-mass heavy vehicles operating on NSW roads, in turn leading to accidents, injury, death and reputational damage for RMS. He claimed that:

*...the tender which was run last year for procurement of 125 scales showed that the successful supplier in fact was the only one which met the requirements. This supplier is the sole supplier for the IRD scales which have been used by RMS for 30 years.*

He also claimed that:

*...a scoping study has been run to assess the quality and durability of all leading scales on the market and*

*this study also conclusively showed that the Swiss made IRD scale is the clear winner in every KPI.*

Mr Jansen had only been in the position of senior manager since January 2018. Contrary to Mr Soliman’s advice, the tender process to procure 125 scales had taken place only months earlier, rather than the previous year. In January 2018, AZH had been paid a significant amount of money for a scoping study fitting the description given by Mr Soliman to Mr Jansen, which the Commission is satisfied it did not undertake.

Mr Soliman told Mr Jansen that his preferred option was the open tender, but that he understood the need to procure the scales quickly due to the “risks” he had identified.

Mr Lee gave evidence that Mr Soliman told him that, if RMS went to open tender, they would miss the deadline of supplying all the scales before the end of the 2018–19 financial year and, if they missed the deadline, it was likely they would lose their funding. Mr Lee said that Mr Soliman said that the market had already been tested in the 125 scales tender in March 2018 and he made the suggestion to the RMS procurement team that a closed tender would enable the tender period to be shortened. The Commission accepts Mr Lee’s evidence.

Although during his evidence at the public inquiry Mr Soliman denied that he sought to influence the decision to bypass an open tender, the Commission rejects that evidence.

On 6 August 2018, Mr Soliman “completed and polished” a memo and procurement strategy prepared by Mr Lee and asked him to work with the procurement branch to have them signed off. The memo sought approval to procure 425 portable weigh scales at the estimated total contract value of \$7 million using a select tender approach “advised and endorsed” by the procurement branch.

The Commission rejects the submission made on behalf of Mr Soliman, that the decision not to proceed with an open tender was made by the chief procurement officer, Albert Bass, on the basis that it was a niche market and a full-blown tender was not required.

The Commission is satisfied that it was Mr Soliman’s conduct in ensuring that an open tender was bypassed that resulted in Novation ultimately having only one serious competitor in Accuweigh.

### The tender goes live

On 16 August 2018, following confirmation from the finance section of the availability of \$7 million for the procurement for the 2018–19 financial year, and sign off on the procurement strategy from senior management,

Mr Lee issued a request for proposal (RFP) to the five companies appointed to category B on the HVM panel. The submission deadline was 30 August 2018.

The RFP was for the supply of 425 scales and 70 chargers before 30 June 2019. The key physical and operating requirements were those Mr Soliman had set while communicating about them with Mr Thammiah on WhatsApp, and that he had provided to Mr Lee on 20 June 2018. These included the scale dimensions, handle length, charging time, weight, and the requirement that the tenderer demonstrate the:

*...ability to provide goods with a minimum use of a lifespan of 10 years by listing no fewer than 10 highway agencies from around the world that have used the tendered scales or equivalent previous models for 10 plus years.*

WhatsApp messages indicate that Mr Soliman had sent a screenshot of the tender criteria to Mr Thammiah on 6 August 2018, telling him the “tender should go live in approximately a week”. Mr Thammiah expressed his concern that the 10-year lifespan criterion could not be proven and the best one could say was that the scale had been used in 10 countries. Mr Soliman reassured him that all that was needed was a letter from IRD stating that the scales had been sold for at least 10 years because “the idea is to make sure accuweigh are excluded. I know they haven’t sold their shit scales in 10 countries”. He told Mr Thammiah, “don’t worry about that criteria. I’ve purposely made it hard to get”.

## Novation’s tender submission

Although it was Mr Soliman’s evidence that he did not recall having any input into preparing the Novation tender submission, the WhatsApp messages between him and Mr Thammiah clearly evidence his involvement.

On 16 August 2018, Mr Soliman and Mr Thammiah chatted on WhatsApp, as Mr Thammiah logged on to the e-tender website and downloaded the RFP. Mr Thammiah agreed to get a draft ready for Mr Soliman to review with him next week.

On 17 August 2018, Mr Soliman asked Mr Thammiah to have a draft ready so they could “polish it up” together the following Monday night.

On 22 August 2018, Mr Soliman asked Mr Thammiah to send any RFP documents he had so that they could work on his laptop and asked Mr Thammiah to bring his key card, so that Mr Soliman could make withdrawals while he was away. Mr Thammiah said he would bring his laptop and a USB and go from there. Mr Thammiah left for Canada the next day. It had been agreed between Mr Soliman and Mr Thammiah that, when in Canada,

Mr Thammiah would contact IRD with a view to getting a reduction in IRD’s price for scales.

On 27 August 2018, Mr Thammiah sent Mr Soliman a screenshot of part of Novation’s draft submission about the company’s profile and financial position, and asked Mr Soliman whether it was okay to answer the questions as he had, or whether he should attach documents and “put a lot of bullshit into the response”. Mr Soliman told him that his answers were fine, that he should keep them short and sweet, and that the only part that “needs to be elaborate is the scoring criteria questions which I done”.

On 29 August 2018, Mr Thammiah sent Mr Soliman Novation’s submission to review and said that he had negotiated to get the scales from IRD for \$300 less. Mr Soliman told him he had received the documents and was checking them and would send them back within the hour. A little later, he told Mr Thammiah to tick “yes” for all insurance checkboxes and said that, “Overall ... looks good no issues. Give it another skim before u submit to make sure nothings missed. We’re golden son!”.

The WhatsApp messages indicate that, on the day the submissions were due, 30 August 2018, Mr Thammiah sent Mr Soliman the submission for one last review. Mr Soliman commented on a few minor matters before telling him, “review finished. Its all good to go bro”, which was five hours before the deadline.

The next day, on Friday, 31 August 2018, Mr Thammiah asked Mr Soliman “how did the submissions go?”. Mr Soliman told him “I review it on Monday ... Sweet. Were goldeb [sic] ... Ill sort the rest from here”.

Only Novation and Accuweigh responded to the RFP with a tender submission.

Mr Thammiah ultimately agreed that the tender process was manipulated to ensure Novation won. He agreed that Mr Soliman gave him the tender criteria and reviewed Novation’s submission. He agreed that Mr Soliman’s intention was that RMS not select Accuweigh as a supplier of scales in that tender, and that he knew this was not a fair process. He agreed that he went along with Mr Soliman and that Mr Soliman was receiving cash from Novation’s accounts at the time.

## The tender evaluation

Mr Lee told the Commission that Mr Soliman told him that he had spoken to Mr Jones to get the requirements for the scales for the first tender, and these were the same specifications being used for the subsequent tender. Mr Lee said that he asked Mr Soliman whether Mr Jones should be asked to be a part of the TEC, but Mr Soliman said they had a falling out; that he had asked Mr Jones, but he refused and that Mr Soliman had a “drama with

him". Mr Lee said that he was concerned that they did not have any expert advice to assist with such a large procurement.

Mr Singh gave evidence that he also voiced his concerns about the absence of a subject matter expert on the TEC for the 425 scale procurement, and asked whether Mr Jones would be involved. Mr Soliman told him that Mr Jones did not want to be on the panel but that he would send an email to Mr Jones' manager to get him to nominate someone. Mr Singh did not know whether that was done, but he found out later that the subsequent tender evaluation was conducted by Mr Lee, Mr Walker and their immediate manager, Mr Zatschler, and there was no one involved with any subject matter expertise.

Mr Lee stated that Mr Soliman asked him to invite Mr Zatschler and Mr Walker to be members of the TEC. He said that the original plan was to have Mr Chehoud assist in the preparation of the tender documents and then sit on the committee to evaluate; however, the senior procurement specialist advised him that, if the tender was low-risk, then an external consultant was not required.

Mr Walker gave evidence that he also suggested to Mr Soliman that Mr Jones should be on the TEC as a representative of the end users of the scales. Mr Soliman said words to the effect of "it's okay; don't worry about it".

Mr Jones gave evidence that he was never invited to be a member of the TEC for the 425 scale tender, he never indicated that he did not want to be involved, and he was not aware of any "drama" between himself and Mr Soliman in the lead up to the second tranche of scales procurement. The Commission accepts this evidence.

The Commission is satisfied that Mr Soliman deliberately kept Mr Jones away from the process because he knew that the tender requirements had been set even more restrictively for this than the previous tender, and the number of contenders had been deliberately and improperly limited. He knew that this would be immediately apparent to Mr Jones and that he would cry foul again.

On Monday, 3 September 2018 via WhatsApp, Mr Soliman told Mr Thammiah that the tender reviews would take place in two hours and that Accuweigh had lodged an informal complaint on the basis that the RFP was too product-specific. Mr Soliman said, "I'm going in to bat ... will let u know if were \$2m richer in a few hours".

When giving evidence at the public inquiry, Mr Soliman disagreed that this message indicated that he expected to benefit from Novation winning the tender.

Mr Soliman sent another message on 3 September 2018, saying that the evaluation had been postponed until the following day and that he would let Mr Thammiah know.

Mr Lee stated that he scheduled a tender evaluation meeting with Mr Zatschler and Mr Walker for 4 September 2018. Mr Lee was surprised when Mr Soliman attended the evaluation of the tender submissions. According to Mr Lee, Mr Soliman stated "I can help you with this". Mr Lee felt he could not decline Mr Soliman's assistance because Mr Soliman was his manager. Mr Lee stated that Mr Soliman repeatedly said during the evaluation meeting that the IRD scales were the best in the market, the scale currently used by RMS, and the only model that fit the storage compartment in the back of the inspectors' vehicles. Mr Lee stated that he felt Mr Soliman was pushing him to accept Novation's proposal and that Mr Soliman said that Novation's proposal was the best.

Mr Lee was a credible witness and the Commission accepts his evidence that Mr Soliman pressured him to select Novation's scale.

Mr Walker gave evidence that, during the meeting, Mr Soliman contributed to the discussion by pointing out where a tender proposal aligned with the tender specification and where a proposal did not meet it at all. Mr Walker did not form a view that Mr Soliman favoured a particular tender proposal from the two under discussion.

On 4 September 2018, Mr Soliman sent a message to Mr Thammiah, saying that Accuweigh's submission was "trash" and that Novation's submission was up for review next.

On 6 September 2018, the TEC conducted the tender review and scored the two submissions received. Against the weighted evaluation criteria, the TEC scored Accuweigh 8 and Novation 5 for price. This criterion was described as "value for money to minimise long term maintenance cost based on evidence of reliability/durability". It scored Accuweigh 6 and Novation 8 for reliability/durability, and Accuweigh 7 and Novation 8 for their respective manufacture and delivery programs. The overall scores were 66 for Accuweigh and 78 for Novation. Although Novation had scored poorly for value for money, because that criterion was only weighted at 10%, it counted for little in the overall assessment.

The memo Mr Lee sent on 9 September 2018 to senior management, including Mr Soliman, noted that Accuweigh's tender submission had been excluded after the technical assessment for the following four reasons:

- the nominated scale was currently uncertified and could not be legally used for certification, although certification was expected in October 2018



- the nominated scale's load cell was made from aluminium rather than stainless steel, as required
- the nominated scale's wheels were not attached to the frame, as required by the RFP
- the nominated scale's operating temperature range was from -10°C to 40°C instead of the required range of from -20°C to 40°C.

The tender evaluation report also noted that Accuweigh had supplied evidence of previous models having a usable life span of 10 years and greater but observed that "all the highway agencies were located in only one country (USA)". Other than the four technical points noted above and the failure to provide evidence of use in more than one country, there is no evidence that Accuweigh's submission did not meet the majority of the tender requirements. The weighted criteria of durability/reliability (50%) and the manufacture and delivery program (40%) were the areas where Novation beat its competitor.

Mr Walker gave evidence that Accuweigh had submitted a "non-conforming tender", in that it failed to meet the four mandatory technical requirements listed above. He said that, even though it was deemed non-conforming, the TEC decided to evaluate it anyway. Mr Walker said that it was primarily Accuweigh's lack of certification and the lack of certainty around its proposed timeframe for certification that posed an unacceptable risk for RMS.

On 10 September 2018, Mr Soliman sent Mr Thammiah a screenshot of his and Mr Weeks' sign off on the tender evaluation report and told him he was meeting with the executive director to get her sign off that day. He told Mr Thammiah that the signature issue was sorted and "were [sic] golden!". He said he expected full approval in the next couple of days and said "then we party".

On 11 September 2018, Mr Soliman sent Mr Thammiah a formal letter of acceptance on behalf of RMS confirming that Novation's tender had been accepted.

The WhatsApp messages between Mr Soliman and Mr Thammiah after Novation won the tender were frequently concerned with the amount of profit Novation stood to make and the effect of the exchange rate on it. On 12 September 2018, they discussed that the profit would be in the vicinity of between \$2.5 million and \$3 million. Mr Thammiah lamented that every cent the exchange rate fell was equivalent to a couple of thousand dollars. Mr Soliman observed, "We still did very well".

On 17 September 2018, Mr Soliman sent Mr Thammiah a screenshot of the PO he had approved in the amount of \$7,431,050, saying, "I approved it. Its done son!". On 12 October 2018, RMS paid Novation \$3,715,525.

On 18 October 2018, the Commission executed search warrants on the homes of Mr Soliman and Mr Thammiah. On 30 October 2018, Mr Thammiah sent an email to Mr Lee advising that:

*Unfortunately the manufacturing arm of IRD have said in uncertain terms [sic] that they cannot complete this order on time and as such I have to terminate this contract.*

Emails available to the Commission, between Mr Thammiah and IRD, in the period between September and the end of November 2018, indicate that, on the contrary, everything was on schedule from IRD's end to meet the delivery timelines set by Mr Thammiah.

On 5 November 2018, Novation refunded \$3,715,525 to RMS.

## Corrupt conduct

### Mr Soliman

Mr Soliman misused his position as manager of the RMS HVP Unit to favour Novation by manipulating RMS's processes for a tender worth over \$7 million for the procurement of 425 portable weigh scales and 70 chargers.

Mr Soliman's conduct is corrupt conduct for the purposes of s 8(1)(b), s 8(1)(c), s 8(1)(d) and s 8(2A) of the ICAC Act.

It is conduct which involves the dishonest and partial exercise of his official functions.

It is conduct which involves a breach of public trust. Mr Soliman held a managerial position and his responsibilities included delivery of the heavy vehicle portable weigh scale program. His official functions included oversight of the tender processes, even if he was not on the TEC. He was required to always have in mind the need to ensure that RMS received best value for money. However, he exercised his functions for extraneous reasons; namely, his friendship with Mr Thammiah and to enhance the prospect of receiving a personal benefit. His friendship was a motivating force in his partial exercise of power.

It is conduct which involves the misuse of information acquired by Mr Soliman in the course of overseeing the tender process and divulged to Mr Thammiah to his benefit, including, in particular, the available budget.

It is conduct that impairs public confidence in public administration and involves dishonestly obtaining the payment or application of public funds for private advantage.

For the purpose of s 9(1)(a) of the ICAC Act, the conduct could constitute or involve the common law criminal offence of misconduct in public office.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman had committed the offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is also satisfied that Mr Soliman’s conduct could constitute or involve a disciplinary offence or reasonable grounds for dismissing him or otherwise terminating his employment under s 9(1)(b) and s 9(1)(c) of the ICAC Act. His misconduct involved serious breaches of the applicable RMS code of conduct, which would warrant the termination of his employment. It involved the dishonest and improper use of his position and the unauthorised disclosure of confidential information to provide a benefit to his friend’s company, and ultimately himself. It involved a significant undisclosed conflict of interest. It involved not obtaining the best value for money for RMS but, rather, the biggest profit for Novation.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Soliman engaged in conduct that constitutes or involves a thing of the kind described in s 9(1)(b) and s 9(1)(c) of the ICAC Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied, for the purpose of s 74BA of the ICAC Act, that this is serious corrupt conduct. It involved a senior public official rigging the requirements of a \$7 million tender to favour his friend and obtain a significant financial benefit for his friend and himself. It involved frustrating the objectives of RMS’s procurement processes, so that RMS’s procurement of 425 portable weigh scales was not conducted on a competitive or merit basis, was skewed in favour of a company whose prices demonstrably far exceeded those of its competitors, and therefore did not represent the best value for money for RMS or the taxpayer. It involved dishonest, unethical and unfair conduct in relation to the procurement processes of a government agency and denied legitimate businesses, which were Novation’s competitors in the market, an opportunity that should have reasonably been extended to them to make a tender submission, and/or to have their tender submissions fairly evaluated. The conduct could involve the offence of

misconduct in public office, which is a serious offence for which the maximum penalty is at large.

## Mr Thammiah

In August 2018, Mr Thammiah, in agreement with Mr Soliman, submitted a response to the RMS RFQ for the procurement of 425 portable weigh scales and 70 chargers, knowing that Mr Soliman had misused his position as manager of the RMS HVP Unit to favour Novation in the tender process.

Mr Thammiah’s conduct is corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act because Mr Thammiah’s conduct adversely affected the honest or impartial exercise of official functions by Mr Soliman.

For the purpose of s 9(1)(a) of the ICAC Act, the conduct could constitute or involve a criminal offence of aiding and abetting the commission of an offence of misconduct in public office by Mr Soliman.

For the purpose of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the essential facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Thammiah committed an offence of aiding and abetting Mr Soliman in his commission of an offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied that Mr Thammiah’s conduct is serious corrupt conduct. Mr Thammiah knew that what Mr Soliman was doing in favouring Novation was wrong. He assisted Mr Soliman to partially and dishonestly exercise his official functions to favour Novation to win a tender involving the expenditure of significant public funds. He knew that the tender process had been manipulated to eliminate as far as possible any competition from Novation and, therefore, without open and effective competition, that RMS would not achieve best value for money. Mr Thammiah did not act independently and honestly in submitting Novation’s tender response, but rather aided and abetted Mr Soliman in his misconduct because he was motivated by the desire for Novation to win the tender by whatever means, however improper. If proved on admissible evidence, Mr Thammiah’s conduct could involve an offence of aiding and abetting the commission of an offence of misconduct in public office for which the maximum penalty is at large.

## Section 74A(2) statements

The Commission is satisfied that Mr Soliman and Mr Thammiah are “affected persons” for the purpose of s 74A(2) of the ICAC Act.

## Samer Soliman

Mr Soliman's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, Novation's email account, the evidence of Mr Jones, Mr Singh, Mr Lee, Mr Walker and RMS procurement staff, and the WhatsApp messages between May 2017 and October 2018 between Mr Soliman and Mr Thammiah.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Soliman for:

- the common law offence of misconduct in public office
- offences against s 87 of the ICAC Act in respect of his evidence:
  - that he was not running the 425 scale tender by directing Mr Lee and that Mr Lee was running the tender
  - denying that he deliberately set the tender requirements to favour Novation
  - that Mr Jones was not part of the second tender because he did not want to be and not because Mr Soliman excluded him because he raised an issue with the first tender
  - that he believed it to be true when he informed Mr Jansen by email on 29 June 2018 that a scoping study had been run "to assess all leading scales on the market", which had "conclusively shown that the Swiss-made IRD scale is the clear winner in every KPI".

As Mr Soliman's employment with RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

## Stephen Thammiah

Mr Thammiah's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, Novation's email account, the evidence

of Mr Jones, Mr Singh, Mr Lee, Mr Walker and RMS procurement staff, and the WhatsApp messages between May 2017 and October 2018 between Mr Soliman and Mr Thammiah.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Thammiah for the offence of aiding and abetting Mr Soliman in the commission of the common law offence of misconduct in public office.

## Chapter 13: Corruption prevention

The corrupt activities of Mr Soliman evolved over time and, broadly speaking, occurred in four phases.

In the first phase, Mr Soliman corruptly used his position to arrange for several field trial and scoping study contracts to be awarded to Novation. He also awarded a contract to Novation to supply under-vehicle cameras.

During the second phase, Mr Soliman corruptly used his official position to influence the Canadian supplier of the portable weigh scales and parts used by RMS to appoint Novation as its exclusive NSW distributor by:

- bringing about the cessation of the longstanding business relationship between RMS and ELWC
- dishonestly representing Novation as a preferred alternative local vendor
- splitting parts and labour components of RMS scale maintenance contracts.

The third phase involved Mr Soliman arranging for contracts for several further field trials and scoping studies to be awarded to AZH, a company controlled by his friend, Mr Hamidi.

In the fourth phase, Mr Soliman corruptly exploited RMS tender processes to ensure that Novation and AZH were each successful in their bids to be placed on RMS panels of preferred suppliers. This enabled them to obtain higher value work more easily through less competitive bidding processes. During this phase, following inclusion on the panels, AZH was awarded four contracts to a total value of over \$800,000 for studies and trials. Novation was awarded one contract worth over \$240,000 for the supply of spare parts, and two contracts for the supply of scales, worth over \$2 million and \$7 million, respectively.

In total, Novation was corruptly awarded work totalling over \$10.9 million and AZH was corruptly awarded work totalling over \$1.3 million.

At all relevant times within the scope of this investigation, RMS was an accredited procurement agency under the *Public Works and Procurement Act 1912*. Pursuant to its accreditation, it had a Procurement Improvement Plan and provided quarterly reports to the NSW Procurement Board on progress against that plan.

RMS had appropriate documented policies and processes relating to goods and services procurements that were known and accessible to RMS employees. Information and advice were available from a centralised procurement team.

Mr Soliman's corrupt conduct was characterised by deliberate manipulation of the procurement processes. The corrupt conduct was caused, allowed or encouraged by factors that can be grouped into four categories, as follows.

- Conflicts of interests held by Mr Soliman were not reported to RMS management. This was despite the fact that another RMS officer knew about them.
- Mr Soliman had a significant level of control of relevant RMS procurement processes and used this control to completely undermine their integrity for the benefit of Novation, AZH and himself.
- Mr Soliman's ability to control or manage the relevant procurement processes was in part facilitated by substantially inadequate procurement governance, which resulted in opportunities to stop his corrupt activity being missed.
- Mr Soliman was subject to limited managerial oversight, which also resulted in missed opportunities to stop his corrupt conduct.

Other public authorities should note that this investigation demonstrates that it can be quite easy for a public official to engage in serious and systemic corrupt conduct



despite the presence of a detailed policy and procedural framework. Mr Soliman's conduct was not opportunistic – it was planned, and he manipulated controls with strategic intent. This highlights the importance of all elements of a control framework working in concert. If one or more control elements are loose, there may be a marked risk that a motivated actor engages in corrupt conduct without being detected.

## Reporting of conflicts of interest

Mr Soliman had conflicts of interest involving both Novation and AZH. Novation was owned by Mr Soliman's close friend, Mr Thammiah, and AZH was owned by another of Mr Soliman's friends, Mr Hamidi. The Commission is satisfied that, at all relevant times, Mr Soliman understood conflicts of interest and that he had a duty to disclose them, and was aware that he had conflicts of interest to declare in relation to Novation and AZH.

The Commission has found that Mr Soliman's failure to disclose them was deliberate and part of his efforts to hide from his employer his relationships with the principals of those companies. The fact that he entered into corrupt profit-sharing arrangements with both Novation and AZH naturally, also made it unlikely that Mr Soliman would make the necessary disclosures of his conflicts of interest and thereby risk RMS scrutiny of his transactions with these companies.

In addition, as discussed in chapter 11, Mr Singh engaged in corrupt conduct by not disclosing his knowledge of personal connections between himself, Mr Soliman and Mr Thammiah.

It can be difficult to detect undeclared conflicts of interest but communicating to staff that they have an obligation to report undeclared conflicts held by other public officials can be a valuable step.

Given the merger between TfNSW and the former RMS, it is possible that TfNSW's online training products on topics relevant to this investigation such as conflicts of interest are not contemporary. Reviewing such training would help ensure its appropriateness.

## Recommendation 1

**That TfNSW updates and reissues its online training and other awareness-raising products relating to conflicts of interest, fraud and corruption prevention and procurement. TfNSW should also consider delivering customised training to staff who manage high-risk programs and budgets.**

In its submissions to the Commission, TfNSW advised that it supports this recommendation.

## Procurement processes

RMS procurement policy and procedures were governed by the NSW Government Procurement Policy Framework. RMS had substantial procurement procedural guidance. Specific documents included its procurement manual, delegations manual, procurement policy (PN195), and purchasing and invoice policy (PN081). These documents were supported by various guidelines and templates, and by peripheral policies in areas such as records management, information management and business case development.

While these policy documents existed, in practice they were not enforced. Instead, Mr Soliman took almost total control of the procurement processes applicable to this investigation and comprehensively undermined their integrity.

## Mr Soliman's discretionary control

Mr Soliman's control of procurements involving Novation and AZH began with their initial engagements because he was able to exercise discretion over what was procured and when, without reference to his manager or anyone else. There was no effective segregation of duties in the procurement processes for which he was accountable.

Mr Soliman's manager, Mr Hayes, had very limited supervision over the engagement of Novation and AZH to undertake field trials and prepare scoping study reports during phases 1 and 3. For instance, this meant Mr Hayes was not able to question basic information about these engagements, such as whether:

- the studies and trials were needed, and whether they could be performed using internal resources
- the budget source for these studies and trials was appropriate
- Novation and AZH were appropriate suppliers
- value for money would be achieved.

In addition, Mr Hayes never saw any of the reports that Novation or AZH were paid to complete. The Commission has found, as set out in chapters 3, 5, 6 and 7 of this report, that Mr Soliman himself authored most of the content of the reports.

The Commission has also found that, in some cases, the content was plagiarised or simply restated data that had been collected by the vendor supplying the equipment being tested. For example, as discussed in chapter 3, the report provided by Novation on the vehicle dimension scanner scoping study contained identical data to that provided to Mr Soliman by the manufacturer prior to the official trial. As discussed in chapter 5, the first two reports submitted by AZH were almost identical to the reports submitted by the technology vendors IMC and SICK.

Mr Soliman's control of procurement processes also extended to procure-to-pay activities, such as vendor creation, quote acceptance, PO approval and invoice approval. Throughout the time period applicable to this investigation, he required all approvals go through him, regardless of whether other staff had the delegated authority. He also communicated this practice to the team leader of the finance section to help ensure it was enforced.

The administrative tasks relating to raising POs and receipting goods were undertaken by Mr Singh on Mr Soliman's instruction. As noted in chapters 1 and 2, Mr Singh was Mr Soliman's friend and had been recruited to RMS by him. Mr Singh's involvement created a false appearance of segregation of duties. In reality, Mr Soliman

had control over creating POs and certifying delivery. Since these administrative activities were controlled by Mr Soliman, he was able to arrange payments for work that was either not performed or not performed by the company engaged to do it.

The Commission has found that most of the reports AZH was contracted to provide were either not completed or not submitted to RMS. Despite this, the purported work was receipted and AZH's invoices were paid. This was not picked up because the receipting was conducted by Mr Singh and other staff under Mr Soliman's control. If concerned, staff would simply ask Mr Soliman whether an invoice was able to be authorised. They would act on his assurance, as they did not understand their role in receipting and trusted Mr Soliman's advice.

For example, as set out in chapter 5 of this report, on 24 May 2017, Mr Thevathasan sent Mr Soliman and Mr Singh an AZH invoice in the amount of \$90,000 (excluding GST) for a "thermal and cold camera field trial and scoping study for automated brake and tyre screening". Mr Thevathasan emailed Mr Soliman and Mr Singh, asking whether the "work received to satisfactory standard? Ok to release funds?". Mr Soliman replied by email, "yes all good. Received this one (hard copy is sitting on my desk for your reading pleasure) and all the others. Ok to approve all of them".

Moreover, as discussed above, when AZH did submit "complete" work, the reports in question had been prepared by Mr Soliman.

As Mr Soliman progressed to other phases of his corrupt activity, he was able to improperly use his control of procurement processes to:

- secretly negotiate to influence the replacement of an incumbent RMS supplier
- create two supplier panels, so that Novation and AZH could become preferred suppliers
- comprehensively undermine tender processes for two large contracts.

## Ability to replace ELWC

As discussed in chapter 4, ELWC was the sole Australian distributor of most of the scales that RMS used. In this context, one would expect that any attempt to replace it as an RMS supplier would have required consultation with, if not endorsement by, interested parties, including more senior RMS officers than Mr Soliman. This is because of the business risk posed by RMS reliance on the scales being calibrated and maintained and ELWC being in the best position to do this. Instead, Mr Soliman was able to engineer ELWC's replacement all by himself.

Mr Soliman informed IRD, the manufacturer of the scales, that there was a government “multi-vendor strategy”. As noted in chapter 4, there was no multi-vendor strategy. It was a pretext used by Mr Soliman to reduce ELWC’s business with RMS so that he could introduce Novation to IRD. The evidence available to the Commission indicates that ELWC was being forced under the fictitious multi-vendor strategy to accept a 50% reduction in its revenue from RMS. ELWC suspected that there was a hidden agenda and severed its relationship with RMS.

As discussed in chapter 4, Mr Soliman dishonestly sought to influence IRD to grant an exclusive distributorship to Novation, even though IRD retained ELWC as its sole distributor in other states. To encourage IRD to appoint the local distributor that he preferred, Mr Soliman told IRD that RMS was planning to replace its entire fleet of portable scales.

Once Novation had become IRD’s sole NSW supplier, Mr Soliman unsurprisingly dropped his push for a multi-vendor strategy.

Mr Soliman was able to have substantial commercial discussions with scale suppliers and manufacturers about his purported multi-vendor strategy without his direct supervisor having any knowledge of what he was doing. Mr Soliman also introduced Mr Thammiah to IRD and advocated for Novation to become a sole distributor without the knowledge of anyone else at RMS.

## Poor panel establishment processes

In one of the WhatsApp messages described in chapter 8, Mr Soliman told Mr Thammiah that \$2 million in capital should be their goal and in another, “These multiple 200k contracts dobt [sic] get us where we need to be fast enough”. Over time, Mr Soliman became concerned that for Novation (and ultimately himself) to obtain the amount of money he was seeking, approval would need to be obtained by a delegate at a higher level. This could undermine the control of procurement processes involving Novation and AZH that he had already established.

Mr Soliman solved this dilemma by manufacturing a process that would see Novation and AZH each placed on a panel of preferred suppliers. Doing so would make it easier for him to undermine controls designed to provide a competitive process. As mentioned in chapter 8, in July 2017, Mr Soliman told Mr Thammiah that, “Ill be the tender selection panel”. Mr Soliman’s plan was made explicit in a later WhatsApp message, on 4 September 2017, that Mr Soliman sent Mr Thammiah:

*Gotta talk about the tender soon btw. It will be on the public e-tender site soon. You need to prepare the tender response to be placed on a panel of successful vendors. Then we can procure all we like, No limits and no risk.*

On 4 September 2017, Mr Soliman presented an argument to his immediate supervisor and their manager, that:

*HVP agenda and contracts have been reviewed and key efficiencies and cost savings can be gained by implementing 2 new panel contracts ...*

*Open-Tender panels provide efficiencies/cost savings by:*

*a. enabling procurement of the best/competitive pricing (especially in these niche compliance market industries);*

*b. converting reactive work (resulting in many small-scope contracts required to be raised as the requirements arise) into proactively managed programs (resulting in a small amount of tightly controlled contracts, reducing risk to RMS) with measurable outcomes such as our innovation/cost savings program. This primarily improves contract management and hence reduces risk to RMS.*

While potentially quite valid, no deeper analysis was presented to support these arguments. Mr Soliman was not made accountable for quantifying or achieving any savings and no measure was included in the Heavy Vehicle Programs Unit Business Plan 2017–18 developed by Mr Soliman. Ultimately, these panels resulted in increased costs, rather than cost savings.

There was a manifest lack of scrutiny of Mr Soliman as he established the panels.

The first panel Mr Soliman created was the PSC panel to which AZH was ultimately appointed, along with three other companies. Creation of this panel did not follow RMS guidelines. For example, no procurement strategy was prepared, no reference checks were undertaken, and no due diligence was conducted regarding vendor experience, capability or financial viability. In short, the evaluation of potential panel members was a paper exercise that was completed within a few hours.

The evaluation criteria for this panel were also very problematic. The technical and methodology criteria were each weighted 10% and experience was weighted 80%. This essentially meant that experience determined the outcome, and that scores on the technical and methodology criteria were nearly meaningless. Additionally, tenderers did not have to submit any price information, such as a schedule of hourly rates. Ultimately, AZH was awarded a score of 8 out of 10 for experience. As described in chapter 6, AZH had very little experience and capability. Its high score was based on its previous RMS engagement; all of which involved corrupt conduct. AZH achieved the equal best score for this criterion and,

by the virtue of the weighting used, this meant that its overall evaluation was very high.

Mr Soliman's supervisor, Mr Hayes, signed off on the tender evaluation report for the PSC panel. The RMS Delegations Manual was clear on delegation levels for contracts involving price but silent on the threshold for sign off on a panel contract where price was not an evaluation criterion. Consequently, it is unclear whether Mr Hayes had the delegated authority to do so.

Through the PSC panel, between January and August 2018, Mr Soliman awarded AZH four contracts in the amounts of \$241,175, \$179,259, \$230,890 and \$195,690. Although AZH was required to submit quotes for the work awarded, Mr Soliman was able to influence the quotation process to ensure AZH's bids were the cheapest because he was preparing AZH's quotes. Overall, AZH, a recently formed and inexperienced company with no employees or experience, was paid a total of \$847,014 under the panel without having to demonstrate it could provide value for money.

The process that followed in setting up the HVM panel, to which Novation was ultimately appointed, was even more fraught. In a WhatsApp message on 27 September 2017, Mr Soliman advised Mr Thammiah, "Bro dont worry i drafted this tender with my team especially for novation". Again, the tender was issued with no procurement strategy and the tender evaluation involved minimal supplier due diligence. As the Commission's investigation showed, Novation had no experience or ability to perform any maintenance work.

Novation was added to the panel despite scoring zero on the criteria for "responsiveness in carrying out the specified work" (which had a weighting of 30%) and achieving an overall tender score of 42 out of 100.

Mr Hayes signed off on the RFT for the HVM panel. On his own evidence, Mr Hayes did not read the RFT document. Given his evidence at the public inquiry, it is also unclear how much attention Mr Hayes paid to the evaluation report, since he found it unusual that Novation was considered for the panel, stating:

*...if they are not the authorised maintenance agency for that equipment or some other equipment with the list, I would, I would find it quite, really unusual that they should be part of it at all. There would be, there would be no justification simply.*

Once Novation was established on the panel, Mr Soliman was able to issue RFQs to panel members for spare parts, knowing that Novation was the only vendor licensed by IRD to supply the parts required.

When constituted appropriately, panels of suppliers can be powerful tools to make procurement effective and efficient. When established by poor processes, however, supplier panels can institutionalise corrupt arrangements at great cost to public authorities. As a result, it is important that the processes surrounding the creation of panels be robust.

## Recommendation 2

That TfNSW:

- **reviews all supplier panels created or used by the former Compliance and Regulatory Services (CaRS) Division (that remain in existence) with a view to assessing compliance with past and current procurement policy, any undisclosed conflicts of interest or similarities with the conduct identified in this investigation**
- **considers mandating additional oversight or involvement by agency procurement experts in the formation and maintenance of all TfNSW supplier panels.**

In its submissions to the Commission, TfNSW advised that it supports this recommendation and that:

- its delegations manual is being reviewed and the authority to approve panels will be included in the next revision
- it is developing a "panel rules" document based on the plan/source/manage sections of the Procurement Manual with additional material specific to compliance monitoring
- clear panel rules supporting the fair, transparent and value for money basis for awarding work will be formally developed, documented, and communicated to panel members, including a requirement to document the justification of decisions to award work to panel members
- a process will be established for a periodic review of financial viability/capacity of panel members for those that are awarded more than \$250,000 of work per annum or are assessed as high-risk
- a process for formally monitoring panel member performance will be delivered and implemented for each panel; the results of this process will be reported to the director of compliance on a periodic basis.



## Undermining of tender processes

As discussed in chapters 11 and 12, once Novation was on a panel, Mr Soliman corruptly exploited tender processes to ensure it was the winning tenderer to supply new scales. Separate orders for 125 and 425 new scales were ultimately placed with Novation.

While Mr Soliman avoided tender processes through order-splitting and simply ignoring requirements for competitive processes, he could not avoid undertaking a tender process for these two contracts. To help ensure that Novation won each contract, Mr Soliman undermined the tender processes in several ways, namely he:

- failed to prepare accurate and adequate procurement strategies
- set preferential selection criteria
- appointed compliant tender evaluation committees
- misused confidential information supplied by tenderers.

## Lack of adequate procurement strategies

In relation to the first tender for the purchase of 125 new scales, Mr Soliman obtained approval to issue a limited RFT to members of the HVM panel on the grounds that the panel been constituted via a competitive process. As discussed above, the process to establish the HVM panel was hardly a genuine competitive process. The delegate, Ms Bailey, executive director of CaRS, told the Commission that she understood, “the existing panel was prequalified”.

RMS policy was that a procurement strategy should be prepared for any direct spend greater than \$250,000. It was noted in chapter 11 that Mr Soliman was asked by his manager to prepare a procurement plan for the purchase of 125 new scales. What Mr Soliman provided in response was simply an estimate of costs for replacement or refurbishment of RMS’s fleet of scales. It did not come close to resembling a procurement strategy. The violation of RMS policy was either not detected or not acted on.

Development of a procurement strategy for the purchase of the scale might have undermined Mr Soliman’s scheme by identifying that:

- not all potential suppliers were on the HVM panel; for instance, HAENNI supplied some of RMS’s existing fleet but was not on the panel
- Novation did not provide calibration, maintenance or repair services for the scales it supplied
- the HVM panel was essentially for maintenance services, not the supply of new equipment

- the fair market price for the scales could have been as low as \$6,350 each, which was the price ELWC had previously been paid by RMS (Novation ultimately supplied them for \$15,000 each)
- RMS had just spent approximately \$1 million on spare scale parts.

For the second order of 425 scales, Mr Soliman was able to influence the process by delegating responsibility for preparing the tender documentation and chairing the TEC to a junior employee under his management. He was able to influence this process even though this employee had been encouraged by a colleague to follow procedure closely and had sought advice from the procurement section.

A procurement strategy was developed, overseen by, and in close consultation with, Mr Soliman; however, it contained some key misinformation. For example, it included the false statements that:

- the HVM panel had been an “open tendered panel” which “successfully scanned the market for scales’ suppliers” and that there was “very high confidence level that all relevant suppliers in this niche market are available on this panel”
- time constraints were a factor; in fact, funding was being sourced from the NHVR, which could be rolled over across financial years.

No one at RMS detected this misleading information. Ms Bailey told the Commission:

*I placed weight on the fact that the Chief Procurement Officer, Albert Bass had signed off on the procurement strategy and the fact that specialist eyes and ears of the procurement team were across the process.*

In addition to containing misleading information, the procurement strategy was manifestly inadequate in that it:

- failed to consider the calibration, certification, regular verification, repair and maintenance of scales
- did not consider approaching other vendors that supplied portable weigh scales that were not on the panel, such as suppliers of the HAENNI scale that RMS also used at the time
- did not include whole-of-life costs or projected benefits
- incorporated a risk assessment that only considered “completion of the procurement by the end of the financial year” and “communication of changes”

- did not refer to the previous recommendations that this should be an open tender preceded by an evaluation of the scales on the market (see chapter 11).

Had these issues been included in the procurement strategy, it is likely that a very different sort of procurement process would have been conducted to award the contract. For example, addressing these issues, would have made it more likely that the supplier of the scales be required to certify, calibrate and maintain them. A holistic and more robust selection criteria would have made it less likely that Novation would have been awarded the contract.

### Preferential selection criteria

Mr Soliman had almost total control of developing specifications and selection criteria for the first tender process. He used this control to bias these criteria in favour of Novation. For instance, on 16 November 2017 via WhatsApp, he told Mr Thammiah:

*...what this means is that we go to open tender ... with strict requirements for the size of the scales (to fit into the current slots) ... and we know [sic] ONLY the PAT scales fit ... And all done legit ... No risk.*

The PAT scales were the IRD scales for which Novation had obtained sole NSW distribution rights in phase 2. As discussed in chapter 11, these requirements were ultimately adopted, resulting in the tender being rigged in favour of Novation. Examples of biased criteria include:

- scale dimensions, such that only the Novation-supplied IRD product would fit the existing racks in RMS vehicles
- weight requirements
- handle dimensions
- wheel specifications.

The manipulation of the tender criteria was not identified because Mr Soliman did not involve the business unit that would use the scales in reviewing the RFT document before it was issued. Mr Jones told the Commission in evidence that he had provided feedback to Mr Soliman on the ideal scale, “but I had not meant for this feedback to be the specifications for the tender”.

In addition to the non-price criteria, Mr Soliman included price as a criteria, weighting this at 50%. This departed from the requirements in the Procurement Manual, which nominated different price assessment formulae and stated, “If you want to use another price assessment formula please contact the Procurement Branch to discuss first”.

Despite all the effort to rig the selection criteria, a potential challenger to Novation arose during the first tender process. A rival bidder, Accuweigh, identified a solution that was potentially better value for money than Novation’s. This solution was based around Accuweigh’s new LP788 scale. The TEC ruled out this model because it would not be certified in time; meaning the project budget would no longer be available. The delegate was not advised this imminent solution existed; meaning no opportunity was provided to consider available options, such as delaying the decision and rolling over the capital funds while further evaluation occurred. Ms Bailey told the Commission, “if there had been a need to roll funding over, I believe this would have been possible”.

By the time the second tender process arose, the potential existed for the LP788 to be a competitive alternative – if it had achieved certification. Consequently, Mr Soliman again rigged the section criteria and weightings for this tender in favour of Novation, as follows:

- he reduced the weighting on price from 50% to 10%, thereby making it easier for Novation to win the tender, despite its high prices, without obtaining the necessary approval to do so
- while he loosened the height dimension for the scales, the length and width dimensions remained static (this was in the context of the LP788 scale being longer than the maximum length)
- he specified that scale weights could not exceed 18 kilograms, which ruled out all bids except Novation and Accuweigh’s anticipated LP788-based bid
- he included the specification that scales needed to be fitted with castor wheels with a stainless steel bracket fillet welded to the scale frame (a modification that had already been made to the IRD scales purchased in the first tender)
- tenderers were required to evidence demonstrated ability to provide goods with a minimum usable life span of 10 years by listing no fewer than 10 highway agencies from around the world that have used the tendered scales (or equivalent previous models) for 10 or more years.

The last two criteria were particularly important in ruling out the LP788 scale offered by Accuweigh. This LP788 scale did not come with wheels fitted. Also, while it had been used by the US military and commercial vehicle enforcement agencies in six US states, this was insufficient to satisfy the restrictive criterion of having been used by 10 highway agencies.

With these additional requirements, Mr Soliman needed to be sure that he had not accidentally made it difficult for Novation to tender. Consequently, on 6 August 2018 via WhatsApp, Mr Soliman sent Mr Thammiah a screenshot of the tender criteria before they were finalised asking, “Heres the tender criterias [sic] ... Any issues?”.

Mr Thammiah responded asking, “why not change the [first] requirement to [be] used in ten countries but prove that at least one country has used it for ten years”. Mr Soliman advised Mr Thammiah, “Yeah dont worry about that criteria Ive purposely made it hard ti [sic] get”.

This exchange emphasises that the tender criteria used in these tenders made a mockery of any notion of a fair, genuinely competitive process. The change in criteria meant that Accuweigh’s overall weighted score reduced from 6.6 in the first tender to 2 in the second.

The Commission notes that, had the default pricing formula described in the RMS Procurement Manual been applied in relation to the tenders, Novation would not have been the preferred tenderer in either tender.

### Inexperienced and compliant TECs

Mr Soliman did not formally serve on the TECs that awarded the two scale contracts to Novation. As discussed in chapters 11 and 12, he, nevertheless, was able to exert strong influence over the deliberations of these committees to ensure that they did choose Novation as the winning tender.

For the first tender, Mr Soliman appeared to have access to tender responses. He communicated via WhatsApp with Mr Thammiah prior to the tender close, providing details of one tender, including the vendor, the type of scale, its price and a screenshot of an extract from the tender response. During the committee’s deliberations, and while Mr Soliman was on leave, he told Mr Thammiah via a series of WhatsApp messages between 10 and 23 February 2018:

*Don't worry we can't lose this. Even if we do, I don't have to accept any quote for any reason I like*

*I can stop the process if something went wrong ... just need to know asap. And I can't exactly call jai now and ask. Looks too dodgy*

*Best it's taking longer anyway so I can control things when I'm back*

Despite not being a member, Mr Soliman attended the second TEC. WhatsApp messages to Mr Thammiah at this time demonstrate Mr Soliman was monitoring the TEC’s deliberations and providing updates via WhatsApp to Mr Thammiah. He described one tenderer’s submission as trash and, in a WhatsApp message at 4.04 pm on

4 September 2018, reported the TEC’s opinion on Novation’s tender: “One of the best submissions for a tender ever. Everyone was like “wow this is exactly the perfect format”. Lollll.”.

As RMS operated under a relatively decentralised procurement model, Mr Soliman was not subject to procurement specialist oversight. This enabled him to set-up the TECs in contravention of policy requirements that:

- at least one TEC member needed to work in another RMS division
- all TEC members had undertaken specified probity training.

Mr Soliman appointed his friend Mr Singh as convenor to covertly retain some control over the TEC for the first contract. The Commission identified evidence of Mr Soliman seeking to direct Mr Singh. For instance, at 4.38 pm on 9 February 2018 via WhatsApp, Mr Soliman advised Mr Thammiah, “I spoke to Jai Told him to evaluate not based on just price”.

Mr Soliman also appointed Mr Jones, one of the inspectors who would be using the product selected, to the first evaluation panel. Mr Jones had many years’ experience using portable weigh scales and was considered a subject matter expert by his peers. Mr Soliman had felt relatively safe about Mr Jones’ involvement, as he knew that Mr Jones liked the new model scales that RMS had recently purchased from IRD through ELWC, which would be the same model scales Novation would be proposing in its tender.

However, as discussed in chapter 11 of this report, this attempt to rely on Mr Jones’ preferences almost backfired on Mr Soliman. Mr Jones identified the RFT was too restrictive regarding dimension criteria. On 28 February 2018, he advised in an email to TEC members:

*I fully appreciate there is an urgency to progress an RFQ relating to available funds to obtain new scales before the EOFY, and considering that operational scales are vital to my business needs I am the last to delay the process, however until alternative scales (e.g. Intercomp or ????) are evaluated, an accurate, fair & honest assessment cannot be made.*

Mr Jones did not seem to be aware that, when he ultimately signed the evaluation report, he had the option of providing a dissenting report.

Ms Bailey approved the tender. She told the Commission that there were no red flags or concerns that stood out when she read the documents and asked questions. Ms Bailey said that the involvement of Mr Jones on the evaluation panel, and the involvement of the financial

team in the process – namely, the involvement of Mr Jansen (before that Mr Hayes) with oversight by Mr Weeks – “was further assurance to me”. She was not aware that Mr Jones had concerns.

For the second contract, all the individuals Mr Soliman appointed as TEC members were people he could readily influence. He took three members of staff, who had only recently come under his supervision, and put them on the TEC, and appointed the most junior as the chair. None of the three received the compulsory probity training and none were experienced in the subject matter. These contraventions of RMS procedural requirements were not detected.

Mr Soliman also dispensed with Mr Jones as a subject matter expert, advising Mr Thammiah in a WhatsApp message on 15 March 2018 that, “I’ll be removing him from all future tenders”. When challenged by the TEC chair on the absence of a subject matter expert, Mr Soliman said he had asked Mr Jones, who had declined to participate. This lie was not detected, and Mr Soliman was not challenged as to why an alternate subject matter expert was not sought.

The TEC for the second contract was in no position to detect and respond to Mr Soliman’s attempt to manipulate the tender criteria. It lacked the knowledge, experience and confidence to identify the issues with the tender process and appropriately respond.

The business users of the scales were not involved in authorising the content of the RFT and were not involved in the evaluation. Unfortunately, this was not detected by Mr Jansen or Mr Weeks when they approved the memo that accompanied the evaluation report recommending Ms Bailey approve the TEC’s recommendation. Ms Bailey said that at no time were any due diligence issues raised with her and that she expected, “any issues to be flagged and raised with senior management for guidance and direction before coming to her”. When asked, Ms Bailey told the Commission that she was not aware that:

- RMS had two different brands of scales at that time
- the TEC consisted solely of members of one unit
- no operational representative was on the TEC.

### Poor tender security

Rigging the selection criteria and appointing the TECs went a long way to ensuring that Novation won each of the two contracts to supply scales. However, Mr Soliman also misused confidential information supplied by other tenderers to help Novation.

As discussed earlier, Mr Soliman communicated in advance with Novation on the selection criteria that would apply. He also colluded with Mr Thammiah in the preparation of Novation’s response, including providing confidential information from other tenderers’ bids. For instance, in relation to the first contract, at 11.32 am on 9 February 2018 via WhatsApp, Mr Soliman advised Mr Thammiah:

*Guess what Nepean Transport just sent their quote \$ ... of the intercomp lp600 The crappy one It texhnijixally [sic] meets the requirements for dimensions but he didnt [sic] respond regarding all requirements like the longer handle etc Jai will disqualify them based on that.*

The tender closed at 5 pm that day. Due to the absence of a TEC member, the tenders were not opened until 10 am on 12 February 2018. Mr Soliman was able to view Nepean’s tender response prior to the closing time because responses were not sent to an electronic tender box. When Nepean emailed its tender response to Mr Singh on 9 February 2018, Mr Soliman was copied into the email.

## Recommendation 3

**That TfNSW considers requiring use of a secure, electronic system for seeking quotations from suppliers. The system should prevent staff from opening RFQ responses before the due date.**

In its submissions to the Commission, TfNSW advised that it supports this recommendation.

## Inadequate oversight

The comprehensive undermining of RMS’s procurement processes by Mr Soliman invites the question of how these processes were overseen. There appear to be two broad types of oversight that were inadequate:

- RMS’s governance of procurement
- how Mr Soliman was managed.

## Procurement governance

As noted above, RMS operated under a relatively decentralised procurement model. Mr Soliman was not subject to procurement specialist oversight and accountability for compliance with procurement, and delegation manuals rested with each RMS division. In Mr Soliman’s case, this was the CaRS division.

Having each division accountable for compliance with procurement procedural requirements is an insufficient strategy to provide a public authority with assurance that



its procedural requirements are being met. As a result, agencies should have controls in place to alert them to the possibility that their procurement processes are being undermined.

RMS missed several opportunities to detect or prevent the corrupt engagement of Novation and AZH because of limitations in these sorts of controls.

### Minimal supplier due diligence

The first missed opportunities occurred at the times of the initial engagement of Novation and AZH. Several red flags were missed or not acted on in relation to these companies. For example:

- each was essentially a one-man company without employees (it should be noted that the RMS Procurement Manual stated that RMS, “prefers to deal with companies instead of sole traders where possible, because sole traders represent increased risks”)
- each company had only been recently created
- neither company had a business address
- neither company had a website
- neither company had customers other than RMS
- at the time Mr Soliman first requested that Novation be added to the RMS vendor master file, it had not yet acquired an ABN (the vendor was initially created as “Thammiah, Stephen Alan”).

In the case of both Novation and AZH, an additional red flag was that neither principal had an engineering background nor any experience in heavy vehicle enforcement systems.

Had these red flags been recognised by RMS when Novation and AZH were first engaged, it is possible that it would have reversed Mr Soliman’s decision to engage them.

At least some of this information would have been established, if basic due diligence had been conducted on Novation and AZH by someone other than Mr Soliman. Examples of the types of basic checks that were not performed on Novation and AZH include:

- assessing their capabilities
- contacting referees
- checking the backgrounds of their principal officers
- determining whether they could provide value for money.

Additionally, there was no requirement to declare any conflicts of interest as part of the vendor creation process, making it easier for Mr Soliman and Mr Singh to hide their associations with each company.

This issue of inadequate supplier due diligence applies not only to the initial engagement of Novation and AZH during phase 1 but also during the establishment of the HVM and PSC panels during phase 3. The evidence provided by tenderers was not tested, allowing false information provided by Novation and AZH to be accepted without question.

### Recommendation 4

**That TfNSW revises its supplier due diligence procedures. This could include but not be limited to:**

- **enhancing the suite of checks that are performed by Transport Shared Services when adding new suppliers to the vendor master file**
- **identifying new suppliers that may not have the necessary credentials, capability or experience**
- **strengthening procedures for conducting referee checks.**

In its submissions to the Commission, TfNSW advised that it supports this recommendation, and will revise its supplier due diligence procedures, including, but not limited to, the matters described.

### Limited procure-to-pay checks

Further missed opportunities to stop Mr Soliman’s corrupt schemes occurred in relation to procure-to-pay processes. Neither order-splitting, nor red flags present on Novation and AZH’s invoices, were detected or acted on.

Prior to establishing the PSC and HVM panels, Mr Soliman tried to avoid scrutiny of contracts awarded to AZH and especially Novation by splitting orders into multiple, smaller transactions. For instance, on 8 June 2017 via WhatsApp, Mr Soliman told Mr Thammiah:

*U just gotta get that sole vendor license by august when he comes Remember i cant open large PO's without the license. All i can do is heaps of \$30K pos [purchase orders] and that raise alarms.*

Even after Novation obtained sole distribution rights in phase 2, Mr Soliman split larger contracts such as those for spare scale parts. By keeping the POs under \$250,000, Mr Soliman was able to avoid having to prepare a procurement strategy that might lead to unwanted scrutiny. In addition to splitting the contracts, Mr Soliman

also colluded with Mr Thamniah and Mr Hamidi to split the invoices into amounts around \$30,000. It appears this was done to minimise the risk that payments would be scrutinised.

In addition to avoiding process scrutiny, such order-splitting allowed Mr Soliman to overcome the limits of his financial delegation. For instance, as discussed in chapter 8, in 2016–17, he arranged for four POs to buy spare parts from Novation in amounts of \$220,000, \$220,000, \$106,800 and \$190,000 (excluding GST) respectively. This represented a cumulative total that exceeded his \$500,000 delegated authority (prior to June 2015, Mr Soliman's delegated authority had been \$250,000 but he successfully argued that it should be raised).

Incidentally, when the second PO in this sequence was raised, just over \$60,000 had been invoiced and paid against the first PO. No one questioned the need for the second PO when most of the funds from the first PO had not been spent.

No one involved in the procure-to-pay process picked up the splitting and sequencing of these POs. Furthermore, as discussed in chapter 8, RMS received 28 invoices issued on nine different dates relating to those POs. All were under \$33,000, with up to seven invoices issued on the same date.

The processing side of vendor management, PO raising and accounts payable was outsourced to TSS, which was part of TfNSW. It was reliant on the information provided by Mr Soliman and Mr Singh to provide assurance that the POs raised, and invoices receipted, complied with relevant policies and procedures.

Mr Soliman's order-splitting was not detected; partly because cumulative payments to a single supplier were not monitored. The focus of fiscal oversight was on comparison of forecasts versus actuals and not on:

- patterns of expenditure
- what the money was being spent on
- the cost centre being used
- the credentials of the supplier and completion of the work
- whether authorisation had been provided in accordance with the delegation manual.

Additional red flags related to the invoices provided by Novation and AZH. Invoices were sequentially numbered, which is a well known red flag for fraud. They also did not comply with the normal terms of payment that RMS had with suppliers. Again, these red flags were either not noticed or acted on.

A dedicated procurement data analytics program can effectively and efficiently systematise the detection of such red flags. They can then be examined by experienced and informed managers to assess their meaning, and further action can be taken if appropriate.

## Recommendation 5

**That TfNSW develops a data analytics program aimed at detecting suspicious conduct including but not necessarily limited to:**

- **order-splitting**
- **recently registered suppliers or suppliers that are not registered for GST**
- **consecutively numbered invoices**
- **misuse of delegations**
- **POs associated with budgets not controlled by the approver**
- **goods and services that are receipted shortly after the PO has been raised.**

In its submissions to the Commission, TfNSW advised that it supports this recommendation and will investigate a data analytics program aimed at detecting suspicious conduct, including, but not limited, to the matters described. It also indicated that it would develop a process for formally managing the performance of members of preferred supplier panels.

## Poor budget scrutiny

When a public authority pays an invoice, the funds come from its budget. For this reason, it is perhaps not surprising that, when the Commission finds procurement-related corrupt conduct, it often identifies poor budget management as a contributing factor.

A key systemic issue that helped facilitate Mr Soliman's corrupt conduct was that the engagements of Novation and AZH were largely financed out of budgets for which Mr Soliman was not accountable.

For the initial studies and reports procured in phase 1, Mr Soliman used underspent capital expenditure ("capex") projects from other business units to fund the operational expenses incurred. Underspent capex projects were also used to finance the first three orders of spare parts placed with Novation. The total funds sourced from underspent capital expenditure from other business units exceeded \$1.6 million. After using the above capex allocated for other purposes, there remained a net underspend at the branch level and a net underspend for the individual capex projects where the funds were sourced from.

The net effect was that there was no scrutiny of the expenditure. The business units allowing the use of unspent funds to fund procurements by Mr Soliman were doing so to maintain their level of budget funding in future financial years. They had little visibility over what the money was being used for, only that it was spent or forecast to be spent. Neither Mr Soliman nor the relevant business unit had an incentive to scrutinise the expenditure.

External scrutiny of expenditure by the HVP Unit managed by Mr Soliman did not include his use of funds from sources outside his cost centre. When asked about diversion of funds, Mr Hayes told the Commission that:

*It probably should have flagged somewhere but if in, in our we would have a monthly review of budgets but the focus on that related to how are we going, say for example there's \$1.2 million over a year so if you, if you distribute it over the 12, 12 months, you know, 100,000 should have been spent by now on that general area. It wasn't, it didn't get down to the granular as to where it was going.*

During phase 4, when approximately \$2 million in unspent funds from another project was identified, Mr Soliman colluded with Mr Thammiah to work out how many scales could be purchased based on the profit margin they were seeking to achieve.

Despite other RMS officers knowing that the market price was at most \$10,000 per scale, Mr Soliman calculated a unit price of \$15,000 to ensure that there was sufficient profit for Mr Thammiah and himself. Dividing the unspent funds by this unit price yielded a figure of approximately 125 scales, which became the required number of scales in the tender documentation. Via a WhatsApp message on 29 January 2018, Mr Soliman told Mr Thammiah, "price point \$15K per scale. That's what I've based this funding request off".

A similar approach was used for the second scale supply tender. In this case, the funds were not taken from underspent capex projects but from \$7 million that had been transferred to RMS from the NHVR. The quantum of these funds, combined with Mr Soliman and Mr Thammiah wanting \$2 million of profit, ultimately led to the figure of 425 scales that appeared in the tender documentation. These calculations were discussed on 17 July 2018 in a series of WhatsApp messages between Mr Soliman and Mr Thammiah:

[Soliman]: *I gotta rejig the tender requirements then*

[Thammiah]: *why*

[Soliman]: *Ask for less scales ... 450 is based on \$15800 including charhers [sic] and delivery ... How much is each charger? And delivery? So, the questions is, with a \$7M budget, at approx. \$15800 per scale EXCLUDING chargers and delivery, how many scales should I tender for?*

[Thammiah]: *do we have a choice*

[Soliman]: *Yeah ... Its all up to me ... 425 scales x \$15800 each = \$6.7M ... Leaves at least 300K for charges and delivery fees ... 425 scales would need 70 chargers*

[Thammiah]: *yeah done*

In relation to the first scale supply tender, Mr Soliman also argued that, if RMS did not move quickly, there would be insufficient time to fulfil the order by the end of June 2018. If the money was not spent, there was a risk that it would have to be returned to Treasury. This desire to spend money before the end of the financial year, so as not to lose it, is a perennial budget management issue observed by the Commission.

Mr Hayes told the Commission that he spent most of his time seeking funds to support business needs relating to heavy vehicle enforcement. In relation to budgetary constraints, Mr Hayes told the Commission, "there were budgetary nightmares is the best way I can describe it".

This focus may have distracted Mr Hayes from paying attention to what the HVP Unit, managed by Mr Soliman, was doing (discussed later in this chapter). The budgetary "nightmare" described by Mr Hayes is a possible incentive for the business practice of moving unspent funds from an allocated purpose to an unfunded purpose. Mr Hayes told the Commission that he would have discussions on regular occasions with the finance manager, "about moving the bucket of money around for different priorities".

The Commission makes no corruption prevention recommendations concerning budget management. Recommendations 5 and 7 provide TfNSW the opportunity to address the issues raised.

## Poor asset management

Ms Bailey told the Commission that she first became aware of the state of the portable weigh scales in October 2017, and that it was her view that, "instead of spending a large sum on maintenance that we [RMS] should consider replacement". This meant that the funding required was capex not opex (operating expense). Ms Bailey moved quickly to secure funds.

At this stage, the HVM panel had been set-up. Mr Soliman arranged for an RFQ for scale parts to be issued, and on 6 December 2017 a quote was received from Novation for \$590,000.

This amount exceeded Mr Soliman's delegation, and the RFQ did not proceed. Mr Soliman issued a second RFQ calculated at approximately \$220,000 (excluding GST). On 25 January 2018 via WhatsApp, he told Mr Thammiah, "Me and jai based the RFQ requirement off your last pricing".

Novation's subsequent quote was accepted and, on 1 March 2018, Novation invoiced RMS for \$240,675.60, which was paid (even though, as noted in chapter 9, the parts were not shipped until April 2018). The Commission located no evidence that the business or the scale maintenance provider requested the parts listed in the RFQ; nor did it locate evidence that the need for parts was determined in the context of essential, planned asset maintenance. When questioned on why the RFQ included eight old-model scales, given RMS was in the process of purchasing 125 new scales, Mr Singh told the Commission:

*Yeah, I don't understand, I don't know the reason why those old scales were procured, but the parts needed to be procured for, to maintain the old fleet of sales*

In relation to asset acquisition, the fact that the need for the two scale purchases was not driven by an asset management plan meant that Mr Soliman was able to exercise discretion in the actual number of scales required. That number was effectively derived by Mr Soliman and Mr Thammiah taking the budget they believed was available, the profit they were seeking, and manipulating the number of scales required to achieve their profit goal. This invites the question of what processes RMS used to assess the number of scales actually needed and what market price was reasonable.

For the most part, RMS senior management seemed to simply accept Mr Soliman's assertion about the number of scales needing replacement and hence the budget. For instance, when advocating for funds to purchase scales in phase 4, Mr Soliman advised RMS executive by email on 26 October 2017 that:

*The scales are over 20 years old. So, we have not gone to market since they were purchased and hence why the cost estimates given are just estimates. However in my experience, I'm confident to provide a cost estimate range of \$6M minimum–\$8.5M maximum if this helps? We will not know the actual cost until we go to tender. And of course, having a tender ensures we secure the lowest prices available on the market*

This advice was accepted. Mr Soliman failed to include relevant key information, such as RMS had recently:

- spent over a million dollars refurbishing scales
- bought 24 of the same model scales for under \$6,500 each.

This misinformation may have been picked up through wider scrutiny by RMS if it had an asset management strategy and a well maintained asset register. At the very least, such mechanisms would have made it easier to question the need to order first 125, then 425 scales.

As it was, RMS management seemed uninterested in asset management of scales when examining the decisions to purchase them. For instance, none of the executive to whom Mr Soliman reported asked any questions about the absence of an asset management plan. Moreover, Ms Bailey gave evidence that the request to use \$2 million in unspent capex to purchase 125 scales:

*...went to the Asset Management Committee in RMS who are responsible for Asset replacement for the whole of the organisation. As the amount was relatively low the AMC indicated they did not need to be involved in the request.*

Having a well maintained asset register and using it as the basis for procurement activities to buy, replace or maintain assets can help ensure that these procurements address genuine need. In addition to helping prevent corrupt conduct, this approach can help ensure a better return on the lifecycle costs of assets.

## Recommendation 6

**That TfNSW develops a register of heavy vehicle enforcement assets. This register should be used as the basis for future procurement strategies and decisions to replace or maintain assets.**

In its submissions to the Commission, TfNSW has advised that it supports this recommendation.

## Oversight of Mr Soliman

While the procurement governance elements discussed above are an important mechanism to control procurement activities, line management also has an important role in managing procurement corruption risk. This is because of its responsibility to oversee staff who perform procurement activities.

There were three key ways in which the management of Mr Soliman resulted in missed opportunities to stop his corrupt conduct:



- red flags concerning Mr Soliman's behaviour were not acted on
- Mr Soliman was supervised in a hands-off manner
- a response to a complaint about the first scale supply tender was poorly handled.

### Failure to act on red flags

Concerns about Mr Soliman should have been apparent from when he first applied to work at RMS in 2010. In this application, his primary referee was his then wife. This relationship was not identified by those involved in his recruitment, nor was a check made of whether his primary referee had managed Mr Soliman. Even if Mr Soliman had no corrupt intent at this point, using a spouse as a reference in this way (instead of a manager) should have raised concerns about his suitability to be employed at RMS.

Once Mr Soliman began acting corruptly from about mid-2015 onwards, Mr Soliman's conduct raised several red flags that he might be engaging in misconduct, such as:

- not training staff who reported to him, even though he placed them in roles (for example, TEC membership) where training was mandated
- not allowing those with delegated authority to exercise their delegations
- excessive control over processes.

These red flags do not appear to have been recognised or acted on by Mr Soliman's line management. Acting on them would likely have resulted in greater scrutiny being placed on Mr Soliman, making it more difficult for him to have operated his corrupt schemes.

### Hands-off supervision

Once Mr Soliman was hired, he was managed with a very light touch. Mr Hayes, Mr Soliman's manager from 2015 to 2017, gave evidence at the public inquiry that the HVP Unit was one of seven sub-units reporting to him, and that management of the HVP Unit was a challenge.

Mr Hayes said the team was very independent and agreed he "had to" leave them to their own devices, stating, "I wasn't micro-managing anybody, it was just impossible". Mr Hayes went on to give evidence that:

*Now, if you take it in context, the Heavy Vehicle area was very modestly funded though it had a lot of work to do, as I think I gave in other evidence, on the whole, my whole areas, all seven of them, might have had a budget of 40 million, so that was a small part of that 40 million, and the focus was on what was the current program that there was very active reporting about and we concentrated to a great degree*

*on that, and to a degree that's kept, for that reason it kept, although it's substantial amounts of money, these numbers under the radar.*

It should be noted that, as discussed earlier, Mr Soliman deliberately helped keep things "under the radar" by engaging in order-splitting and using unspent capex funds from other business units. It should also be noted that, when the Commission finds corrupt conduct, it often occurs in business units whose activity is under the radar in some sense. In evidence he gave to the Commission, Mr Hayes said that the monthly review of budgets, "didn't get down to the granular as to where it was going".

The hands-off supervision of Mr Soliman continued after Mr Hayes departed his role in 2017. Mr Jansen replaced Mr Hayes, and both Mr Jansen and his manager, Mr Weeks, were new and had been recruited from outside TfNSW. This posed some potential difficulties in supervising and performance-managing Mr Soliman. This was perpetuated by the fact that Mr Soliman was not always at his desk, and he enjoyed discretion and flexibility relating to his hours and location of work (which included his home, other RMS locations or in the field).

This flexibility, however, was not the only problem with the management approach, as such circumstances can be successfully managed. An additional issue appeared to be knowledge of what Mr Soliman was doing. Absent this visibility by management, Mr Soliman was not asked enough probing questions or made to give an adequate account of his decisions. For instance, no one questioned:

- the splitting of maintenance and parts supply contracts (which facilitated Novation being awarded the latter) that created the key risk that Novation could not offer key services associated with calibration, service and repair of the product it supplied
- why the tender documentation for the second scale supply contract in phase 3 had not been signed off by the inspectorate who would be using the scales, and why this area of the business was not involved in the evaluation of the tenders.

When asked about his visibility of what Mr Soliman was doing, Mr Hayes told the Commission that:

*Unless for some reason one of the issues around what he was doing was the subject of immediate discussion or review, not a lot, not a lot. Again, like every other manager that I had, I had to really, what do you call them, trust them or depend upon them to take care of their area of business, and there was [sic] areas where I would focus on that area and then I would have to put my focus on another area, depending on what was the hot subject or the hot deliverable*

*at that particular point of time. But did I, you know, did I check, did I know what he was doing on a daily basis? Absolutely not, no.*

While some degree of trust is necessary to run an organisation, and it can often be undesirable or even impossible to micromanage, failing to subject an employee or contractor to some level of sceptical oversight can create a perception that they can act improperly without consequence. This creates an unacceptable risk of corrupt conduct.

### Inadequate response to complaint about tender process

As discussed above, Mr Soliman rigged the selection criteria for each of the scale supply tenders in favour of Novation. He also appointed Mr Jones as a TEC member for the first tender and felt safe in this appointment because Mr Jones liked the scales that Novation would supply if it won the tender.

When Mr Jones saw the tender criteria, he immediately raised a concern that they appeared to favour the scales manufactured by IRD (notwithstanding the fact that he thought these were the best product tendered). As a result, Mr Jones initially refused to sign the evaluation report prepared by Mr Singh. Mr Jones' actions were commendable but he was ultimately let down by the process that followed.

As convenor of the TEC, Mr Singh escalated Mr Jones' refusal to sign the evaluation form to another officer (who was acting in Mr Soliman's position) and Mr Soliman's manager, Mr Jansen.

Mr Jones had identified that the scale dimensions specified in the RFT were restrictive, meaning that only the IRD product would fit the storage racks that were installed in RMS vehicles. Once he had escalated the issue, Mr Singh conducted some research and identified that the cost of refurbishing the RMS vehicles with storage racks to suit other products was in the order of \$150,000. At the public inquiry, Mr Singh stated, "I think I may have doubled it just to add extra fat, just in case".

On 21 February 2018, Mr Singh emailed Mr Jansen to advise that two of the three tender submissions received, "met the requirements of the RFQ adequately however only one of these submissions met the scale dimension requirements". Mr Singh went on to advise Mr Jansen, "Based on the estimates received, we've determined that it will cost approximately \$300,000.00 to replace the storage racks on all RMS enforcement vehicles".

Mr Singh then presented the total cost of the two options provided in the other tender, submitted by Accuweigh, stating:

*As it can be seen, either option will provide significant savings compared to the submission by Novation Engineering. The additional money will enable us to invest in additional scales to replace the current fleet.*

*Since the cost of replacing the storage racks falls outside the scope for funding, we are seeking clarification on whether replacing the storage racks can be considered within this scope. If not, we'll proceed with the recommendation of awarding the tender to Novation Engineering Pty Ltd.*

Mr Jones' concerns led to a focus on the storage racks; however, this issue was symptomatic of the probity issues of:

- fairness – the dimension criteria were too restrictive (in that they favoured one supplier)
- value for money – the absence of proper evaluation of the scale options being put forward.

As discussed in chapter 11, at this point, Mr Jones was convinced to sign the tender evaluation report based on reasoned arguments of business risk and loss of funding. As a compromise, a recommendation was inserted into the executive summary of the report that the next tender would be open and be preceded by a market evaluation. It should be noted that Ms Bailey, the approving delegate, was not made aware that potential probity issues had been raised.

When the procurement strategy for the second scale delivery contract was sent to Ms Bailey for approval, it did not mention the previous recommendations to conduct an evaluation of the performance of scales available in the market, and to conduct an open tender process to enable further competition and value for money. Given this, Ms Bailey was in no position to detect the change in procurement approach. Instead, as discussed earlier in this chapter, she reasonably assumed that those before her who had signed off had undertaken appropriate due diligence; they had not.

When an experienced and knowledgeable officer refuses to sign a tender evaluation report because they believe the criteria are biased, this is the very situation where probity advice should be sought. In addition, it should be escalated to the delegation holder so they can assess whether the situation has been dealt with appropriately. Neither occurred.

Internal complaints, both formal and informal, are consistently identified as the mechanism by which internal fraud and corrupt conduct are most frequently identified. An appropriate examination of Mr Jones' concerns about the tender selection criteria may have resulted in an overhaul of the tender process and ultimately stopped Novation from being awarded either scale supply contract.

Given the size of these contracts, this would have prevented approximately \$9 million of corrupt conduct.

### Lessons learnt

In its submissions to the Commission, TfNSW has advised it is likely that some of the functions of the HVP Unit will be transferred to the NHVR. It is still unclear which functions these are, which will remain within the unit, and when this will happen. TfNSW has also advised that it is undertaking a review of the HVP Unit's functions and management structure as part of the RMS and TfNSW amalgamation. This reform is ongoing and the outcome of what the new structure will look like is unknown at the time of publishing.

As a result of these substantial organisational changes, the Commission has limited the number of corruption prevention recommendations it has made in this report. Beyond those that have been made, however, there is a need for substantial systems changes across TfNSW. The specific changes needed can be assessed by TfNSW as it beds down its new organisational arrangements.

### Recommendation 7

**That TfNSW performs a “lessons learnt” exercise or audit based on the findings from this investigation. This could include an examination of:**

- **whether the weaknesses identified in the HVP Unit exist elsewhere in TfNSW**
- **business units that lack adequate supervision**
- **procurement governance and reporting**
- **the need for a new corruption risk assessment**
- **substantial procurements that proceeded without a procurement strategy**
- **whether the scope of responsibility and resourcing of the procurement advisory function is sufficient**
- **whether the devolved procurement framework provides sufficient assurance regarding value for money and compliance.**

In its submissions to the Commission, TfNSW has advised that it supports the premise of this recommendation.

TfNSW also provided a copy of an *Internal Audit Report – Procurement practices within Compliance Monitoring section* (“the Deloitte Report”) dated May 2019. This report outlines agreed management actions and has informed many of the initiatives TfNSW made in its submissions to

the Commission. TfNSW advised that, to the extent that the Deloitte Report did not examine the matters described above, TfNSW will further examine those matters. The Commission makes no comment on the quality, accuracy or scope of the Deloitte Report.

The Commission also notes TfNSW's advice that:

- it has appointed a dedicated procurement adviser to assist the Compliance Branch in ensuring its procurement complies with the Procurement Manual
- its procurement manual is being reviewed
- it has implemented or is implementing a number of initiatives to address the systemic issues described in this chapter; these are set out at Appendix 4.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to TfNSW and the responsible minister.

As required by s 111E(2) of the ICAC Act, TfNSW must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations, whether it proposes to implement any plan of action in response to the recommendations and, if so, details of the proposed plan of action.

In the event a plan of action is prepared, TfNSW is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

# Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- i. corrupt conduct (as defined by the ICAC Act), or
- ii. conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- iii. conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Electoral Act 2017*, the *Electoral Funding Act 2018* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.



## Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
- (b) *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
- (c) *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
- (d) *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.*

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- (a) *collusive tendering,*
- (b) *fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,*
- (c) *dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,*
- (d) *defrauding the public revenue,*
- (e) *fraudulently obtaining or retaining employment or appointment as a public official.*

Subsection 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) *a criminal offence, or*
- (b) *a disciplinary offence, or*
- (c) *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
- (d) *in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.*

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within

the description of corrupt conduct in s 8 is not excluded by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirement of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon

jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

*...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

*...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.*

See also *Rejtek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.

## Appendix 3: Summary of responses to proposed adverse findings

Section 79(A)(1) of the ICAC Act provides that the Commission is not authorised to include an adverse finding against a person in a report under s 74 of the ICAC Act unless the Commission:

- has first given the person a reasonable opportunity to respond to the proposed adverse finding
- includes in the report a summary of the substance of the person's response that disputes the adverse finding, if the person requests the Commission to do so within the time specified by the Commission.

Counsel Assisting the Commission made written submissions setting out, inter alia, what adverse findings it was contended were open to the Commission to make against various parties. These were provided to the relevant parties on 7 February 2020 and submissions in reply were received from the representatives of Mr Soliman, Mr Thammiah, Mr Hamidi, Mr Singh, RMS, and four additional RMS employees who were not affected persons in this matter.

Once these submissions had been received, a further opportunity was extended to the parties to make cross-party submissions by 17 April 2020 and limited to a maximum length of 10 pages. Submissions were received from representatives of Mr Soliman, Mr Thammiah, Mr Singh and RMS.

The Commission considers that, in all the circumstances, all affected parties had a reasonable opportunity to respond to the proposed adverse findings.

Representatives for Mr Thammiah, Mr Hamidi and Mr Singh requested that a summary of their responses to any adverse findings contended for by Counsel Assisting in her submissions of 7 February 2020 be included in the Commission's report. Representatives for Mr Soliman did not request that a summary of his response to proposed adverse findings be included in this report.

The Commission did not accept all of the adverse findings contended for by Counsel Assisting. It is not necessary to summarise the substance of responses in relation to those adverse findings not made by the Commission.

### Mr Singh

#### AZH and the scoping study contracts

It was submitted on behalf of Mr Singh that there was no evidence that the five AZH quotes issued within just one week in January 2017, for which he raised POs in AZH's favour at Mr Soliman's request, was excessive or highly irregular. It was also submitted that Mr Singh knew Mr Hamidi worked in technical support at Optus and knew he had the experience and expertise to analyse data and prepare reports and assumed he had the experience and understanding to undertake the tasks required for trials. Further, Mr Singh had observed Mr Hamidi liaising with inspectors and vendors and taking notes at a number of trials. It appeared to Mr Singh that Mr Hamidi understood what was happening and was actively involved in these trials. Mr Singh enquired about the whereabouts of AZH's report when he received AZH's first invoice but, on Mr Soliman's instructions, progressed the invoice to payment on having the terms and conditions of payment pointed out to him. Mr Singh was lied to by Mr Soliman. He did not know that Mr Hamidi was not writing AZH's reports or attending trials.

The Commission's assessment of the evidence relating to Mr Singh's knowledge of the arrangement between Mr Soliman and Mr Hamidi is set out in chapter 5 of this report.

#### AZH's tender response for the PSC panel

It was submitted on Mr Singh's behalf that he had seen reports completed by Mr Hamidi at the time of the tender evaluation for the PSC panel. It was also submitted that,



while Mr Hamidi did not seem to have any specific ITS technology experience, the data analysis work “was not all that complicated” and he assumed, because he knew Mr Hamidi to be “a fairly technical guy” from their time working together at Optus, that he had the capability and experience to facilitate testing and prepare reports. It was further submitted that Mr Singh “gave candid evidence that he flicked through the reports annexed to the tender application”.

The Commission accepts that Mr Singh would not have known at the time of the tender evaluation that Mr Hamidi had not prepared the two reports annexed to the AZH tender submission. However, for the reasons set out in chapter 6 of this report, the Commission is satisfied that Mr Singh knew that Mr Hamidi lacked the requisite experience and qualifications in the ITS industry and turned a blind eye to the truth of AZH’s tender submission because of his friendship with Mr Hamidi.

## Conflicts of interest

### PSC panel

It was submitted on behalf of Mr Singh that he learnt about probity and ethics in procurement *after* training in 2018 and only after he had been on the TEC for the PSC and HVM panels in late 2017. He had not had conflict of interest training “in any meaningful manner” by the time of the PSC tender evaluation. While he understood what an actual conflict of interest was at the time, he struggled to understand the concept of a *perceived* conflict of interest. Mr Singh saw no conflict of interest in relation to his involvement as convenor of the TEC for the PSC panel because he had no financial interest in the success of AZH at the time. He realises in hindsight, however, that he did have a conflict of interest.

The Commission rejects these submissions. By the time he was the convenor of the TEC for the PSC panel, Mr Singh had undertaken online code of conduct training

every couple of years since joining RMS, he knew that Mr Chehoud had had to withdraw from the TEC because of a conflict of interest, and he had drafted the addendum to the conflict of interest declaration requirements in the RFT himself. He had also been involved in the HVM panel tender evaluation just prior to his involvement in the PSC panel tender evaluation and had therefore recently turned his mind to conflict of interest issues in that context. He knew that he had a close friendship with one of the eight tenderers for inclusion on the PSC panel that could influence his decision-making and cause him to consider AZH’s submission more favourably. On even the most rudimentary understanding of a conflict of interest, whether actual, potential or perceived, his friendship with Mr Hamidi was a matter he should have declared on his conflict of interest declaration form.

It was submitted on his behalf that, when Mr Singh signed a conflict of interest form on 20 October 2017, declaring that he had no actual or perceived conflict of interest in relation to the PSC panel and his role as the TEC convenor, his failure to declare his personal friendship with Mr Hamidi was not deliberate and therefore does not amount to corrupt conduct. It was further contended that a finding of corrupt conduct requires a finding that Mr Singh was dishonest in his evidence to the Commission.

The Commission does not accept that it needs to find that Mr Singh lied to make a finding of corrupt conduct against him under the ICAC Act. The Commission rejects Mr Singh’s assertion that he did not know he had a conflict of interest in relation to his friendship with Mr Hamidi that he should have declared, but it does not need to make the finding that he therefore lied or was dishonest.

For the reasons set out in chapter 6 of this report, the Commission is satisfied that, in recommending AZH’s appointment to the PSC panel, Mr Singh exercised his official functions partially, bringing his conduct within s 8(1)(b) of the ICAC Act and that his failure to disclose his friendship with Mr Hamidi in the circumstances could

constitute a disciplinary offence for the purposes of s 9(1)(b) of the ICAC Act.

A disciplinary offence is defined to include any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law. The Commission is satisfied that Mr Singh's conduct in this regard was serious given his responsibilities as the TEC convenor and the consequences of his decision to appoint AZH to the PSC panel. This is sufficient for a finding of corrupt conduct against him under the ICAC Act.

### 125 scales tender

It was submitted on Mr Singh's behalf that he was not required to disclose his awareness of an actual or perceived conflict of interest when he signed the tender evaluation report recommending Novation as the winning tenderer for the procurement of 125 scales. This is because while he had been suspicious of possible collusion between Mr Thammiah and Mr Soliman in relation to this tender, he no longer held suspicions by the time he signed his conflict of interest declaration. It was submitted that Mr Singh's suspicions were allayed by the conversation he had with Mr Hamidi when he asked whether there was anything going on between Mr Thammiah and Mr Soliman, and Mr Hamidi responded that they were not on speaking terms.

The Commission rejects this submission. The Commission does not accept that a conversation with Mr Singh's good friend, Mr Hamidi, who told him Mr Soliman and Mr Thammiah were not on speaking terms at that time, was enough to allay his suspicions that Mr Soliman had favoured Mr Thammiah in this tender process. Mr Singh had seen Mr Thammiah at Mr Soliman's wedding less than a week before Novation submitted its winning tender submission, quoting just under \$2 million to supply 125 scales (the available budget for which was \$2 million).

Given his suspicions, his knowledge of Mr Soliman's and Mr Thammiah's longstanding friendship, and his concerns about the significant price difference between Novation's tender and its competitors', it was not sufficient for Mr Singh to simply accept Mr Hamidi's assertion that Mr Soliman and Mr Thammiah were "distant" at the time to discharge his obligation to disclose his knowledge of the friendship between Mr Soliman and Mr Thammiah to his supervisors in RMS and/or on his conflict of interest declaration.

## Mr Hamidi

There were no submissions made on behalf of Mr Hamidi that findings of corrupt conduct against him were not available to the Commission.

## Lack of admissible evidence to warrant referral to the DPP

It was submitted on Mr Hamidi's behalf that, because Mr Hamidi's evidence in the public inquiry and under compulsory examination was the subject of a declaration pursuant to s 38 of the ICAC Act, his admissions could not be used against him in any criminal proceedings. There is therefore a distinct lack of evidence that may, or can, be admissible against Mr Hamidi should the matter be referred for consideration or later prosecuted by the DPP. It was submitted that the evidence of Mr Soliman and Mr Thammiah would not be available for use in criminal proceedings against Mr Hamidi because the evidence given by these affected persons during the public inquiry was clearly incredible and entirely unsatisfactory.

The overall submission on Mr Hamidi's behalf was that admissible evidence could not establish that he had actual knowledge of any fraud in criminal proceedings and that, in respect of a significant number of the scoping studies, the evidence relating to his knowledge is limited to what can be inferred from the payments made by RMS to AZH. It was submitted that it is not clear on the admissible evidence available to the Commission that Mr Hamidi was aware that the required work had not been performed, the extent of Mr Hamidi's actual involvement in any report produced, or of his knowledge of the contents of any such report.

It was further submitted that a significant evidentiary hurdle concerns the identity of the person Mr Soliman was dealing with at AZH. In resisting the basis for a referral to the DPP, submissions on Mr Hamidi's behalf sought to rely on the fact that it is Ms Hamidi, rather than Mr Hamidi, who is named on a large proportion of the correspondence between AZH and RMS.

It was finally submitted that a referral under s 74A of the ICAC Act should not be made because of the extent of his cooperation as a witness.

The Commission rejects these submissions. The Commission is satisfied that there is sufficient admissible evidence available to warrant a referral of Mr Hamidi to the DPP.

First, in relation to the contended evidentiary hurdle of the identity of the AZH representative with whom Mr Soliman was dealing, there is admissible evidence available to establish that it was Mr Hamidi rather than his wife who conducted AZH's business. This includes RMS business records showing that:

- Mr Hamidi, as "operations manager", established AZH's company credentials with RMS, including by providing AZH's bank account details

- Mr Hamidi, in his own name, sent emails attaching quotes and invoices to RMS
- Mr Hamidi received RMS correspondence at his personal email address
- the “contact” for AZH on internal RMS forms was “Ali Hamidi”
- Mr Hamidi was named as the “primary contact” on AZH’s tender for the PSC panel
- Mr Hamidi was observed attending the three trials he did attend by Mr Singh and the technology vendors involved
- Mr Hamidi signed the PSC panel contract.

In addition, there is admissible evidence establishing Mr Hamidi’s prior relationship with Mr Soliman.

Secondly, in relation to the contended lack of knowledge of fraud on Mr Hamidi’s behalf, as set out in chapter 5 of this report, there is admissible evidence relating to the first two trials attended by Mr Hamidi to show that AZH submitted a report to RMS, subsequent to each trial, that was the same in all material respects as the report of the technology vendor involved in each of the trials. AZH submitted invoices and was paid for each of these reports. There is admissible evidence from the technology vendors to establish that their work was passed off as the work of AZH. There is evidence that Mr Hamidi had access to the IMC report before the AZH report was submitted to RMS.

Thirdly, there is admissible evidence obtained from RMS, including:

- Mr Soliman’s emails to AZH with instructions and/or updates on AZH work completed
- Mr Soliman’s provision of quote numbered “RMS01” to AZH
- Mr Hamidi’s emails to RMS, which blind-carbon-copied Mr Soliman, attaching AZH invoices
- AZH’s quotes; the first four of which are identical to the last four of Novation’s quotes
- Mr Soliman’s email to himself, attaching the AZH logo, a week before the second AZH report was submitted
- AZH documents, including invoices and reports, both complete and draft, located nowhere else but at Mr Soliman’s RMS workstation following the execution of a search warrant at his home on 18 October 2018 (other than the first two reports, the other reports, for which AZH submitted invoices and was paid, were not located in RMS business records and were

located, if at all at RMS, only on the USB found at Mr Soliman’s workstation).

A note was extracted from Mr Soliman’s mobile telephone in which he reminded himself to “move AZH files and clear browser cache”. The evidence identified above is evidence that tends to establish that Mr Soliman, and not Mr Hamidi or Ms Hamidi, drafted AZH documentation, including quotes, invoices and reports.

Evidence will be available from RMS that the work for which AZH quoted, invoiced and was paid, including fabrication, mounting and the provision of equipment, was not performed and that, besides the first two reports, which were not the work of AZH in any event, no other AZH report was ever submitted to RMS.

Fourthly, the tender submission lodged by AZH for inclusion on the PSC panel contained extensive demonstrably false representations about Mr Hamidi’s experience and expertise.

Fifthly, RMS remittance advices and AZH financial records are available to evidence the payment by RMS to AZH for over \$1.3 million for work that was demonstrably not performed by AZH.

Sixthly, contrary to the submission on behalf of Mr Hamidi that the only evidence supporting an allegation of \$175,000 in cash payments made by Mr Hamidi to Mr Soliman is Mr Hamidi’s own evidence, the ledger of payments found on Mr Soliman’s mobile telephone, amounting to \$177,450, correlates with evidence of withdrawals from bank accounts associated with Mr Hamidi, including his own. The timing and amount of those withdrawals can be reconciled with the dates and amounts in Mr Soliman’s ledger and with deposits into Mr Soliman’s account.

The Commission is satisfied to the requisite standard that, even without Mr Soliman’s evidence, which it is accepted is unreliable and lacking credibility, there is sufficient admissible evidence to establish that AZH was paid for work it was contracted to provide, but did not provide, and that cash payments were made to Mr Soliman from the account into which RMS paid AZH for the work he awarded it.

### **The assistance provided by Mr Hamidi’s evidence and public interest considerations**

It was also submitted that Mr Hamidi’s evidence had provided the Commission with significant assistance in the pursuit of its objectives of investigating, exposing and ultimately preventing further serious corrupt conduct involving RMS as a public authority and Mr Soliman as a public official. In view of the importance of his evidence

and the level of cooperation he provided throughout the Commission's investigation and public inquiry, referring him for consideration of criminal prosecution would not be in the public interest.

This submission and the Commission's discussion of the reason for its decision to recommend consideration be given to seeking the advice of the DPP with respect to the prosecution of Mr Hamidi for a range of criminal offences, are set out in chapter 7 of this report.

## Mr Thammiah

### Mental health, credibility issues and memory problems

It was submitted on behalf of Mr Thammiah that, at the time of giving evidence before the Commission, he suffered from mental health issues that affected his evidence and, in particular, his memory. These submissions are addressed in chapter 1 of this report.

It was also submitted that, for the duration in which Mr Thammiah engaged with RMS, he had mental health issues, which contributed to his vulnerability to approaches by Mr Soliman. The Commission rejects this submission. At no time during the Commission's investigation of this matter, including during the public inquiry and subsequent submissions process, was any expert medical evidence provided of any history, symptoms, diagnosis or treatment of any mental health illness or problem in Mr Thammiah, or opinion as to the effect of this on his memory or capacity to give truthful evidence. The only evidence before the Commission of any such matters was Mr Thammiah's own assertions.

It was further submitted on behalf of Mr Thammiah that, while it was agreed that at times "he was unable to recall or clearly express his evidence", he provided concessions and adopted positions that were adverse to his interests. It was also submitted that Mr Thammiah sought, where possible, to assist the Commission's inquiry. The Commission rejects these submissions.

Subsequent to becoming aware that the Commission had obtained a significant amount of incriminating WhatsApp evidence from his mobile telephone, rather than making admissions or concessions in response, Mr Thammiah continued to seek to explain the obvious inconsistencies between the objective evidence and his claimed subjective understanding, by vague allusions to the mental health difficulties he was allegedly suffering at the time, by an asserted failure to recall any specific detail about the trials and studies he undertook, or indeed to have any but the most generalised memory of the work for which he was paid by RMS.

It was submitted on Mr Thammiah's behalf that there is no reason to call into question Mr Thammiah's evidence as to his mental health condition. The Commission rejects this submission and accepts instead the submission of Counsel Assisting that, although the rules of evidence do not apply, the Commission is not bound to accept the vague assertions made by Mr Thammiah. Matters of this nature call for specialised knowledge.

### Procedural fairness

It was submitted on behalf of Mr Thammiah that evidence in the form of the transcript of the compulsory examination of Mr Mitchell, a record of interview with Mr Chehoud and written responses from Mr Malhotra and Mr Garza of IRD, were tendered without these witnesses being called to give evidence. It was contended that relying on this evidence for adverse findings against Mr Thammiah would be a denial of procedural fairness to him. In particular, it was contended that Mr Thammiah should have been afforded the opportunity to test the evidence of the IRD personnel.

The submission in relation to Mr Mitchell is rejected for the reasons set out in chapter 8 of this report.

The Commission accepts that questions of weight attach to the statements provided by Mr Malhotra and Mr Garza and, for that reason, as set out in chapter 8, it has accepted that evidence where it is corroborated by other evidence obtained by the Commission, including Novation's financial and business records, financial information concerning Novation's account with IRD, and all IRD invoices itemising the actual parts and scales ordered by Novation.

### Relationship with Mr Soliman

It was submitted that, following his reconnection with Mr Soliman as a friend in 2015 and over the course of time that he was doing work for RMS, Mr Thammiah's "state of mind worsened and he became more subservient to Mr Soliman". It was submitted that, because of his vulnerability, it became hard to question Mr Soliman.

The Commission rejects this submission. The hundreds of WhatsApp messages between Mr Thammiah and Mr Soliman from May 2017 until October 2018 clearly evidence Mr Thammiah's ability to question Mr Soliman, his autonomous decision-making, and his willing participation in the various schemes to exploit RMS for profit. This evidence is discussed in chapters 8, 9, 10, 11 and 12 of this report.

It was submitted that Mr Thammiah accepted his best friend's assurances that he "hadn't breached probity" when he asked Mr Soliman whether it was acceptable



to be doing work for RMS when he was Mr Soliman's friend. He chose to think of him as "honest and a man of integrity" rather than a liar. The Commission rejects this submission. The WhatsApp evidence discussed throughout this report is replete with examples of communication between Mr Thammiah and Mr Soliman in which they discuss the need to hide their relationship and wrongdoing from RMS personnel, IRD, banks and Novation's competitors. Some of these examples are set out in chapters 8, 9, 10, 11 and 12 of this report.

The submission was made that Mr Soliman lied to Mr Thammiah on WhatsApp in order to make him feel indebted to Mr Soliman and with the aim of exploiting Mr Thammiah for personal gain. The Commission accepts that there were messages sent by Mr Soliman that were exaggerated or even dishonest, but it also accepts the submission of Counsel Assisting that these messages are of little significance in the context of the overall communication between them. In addition, Mr Soliman and Mr Thammiah acted in accordance with their WhatsApp communication and there is substantial evidence in that communication that Mr Thammiah was a willing and enthusiastic participant and that they considered themselves equal partners in relation to Novation's business, as set out in chapters 8, 9, 10, 11 and 12.

### **Under-vehicle camera procurement**

It was submitted that Novation was asked to purchase 21 under-vehicle cameras from a certain overseas company and it provided a price for doing so, which "was accepted by RMS". It was further submitted that the \$35,000 profit made by Novation on this contract does not allow the inference of wrongdoing on Mr Thammiah's part because it was the obligation of RMS employees, not of the external contractor, to ensure that the purchase represented value for money for RMS.

This submission ignores the fact that the RMS employee, who accepted Mr Thammiah's quote, was Mr Soliman. When Mr Thammiah submitted his quote, he knew that value for money for RMS was not a consideration for Mr Soliman and that Novation's quote would be accepted whatever the mark-up applied because Mr Soliman was favouring Mr Thammiah.

### **Mr Thammiah's work at Mr Soliman's house**

Submissions were made in relation to each of the five field trial and scoping study contracts awarded to Novation to the effect that it was Mr Thammiah, rather than Mr Soliman, who was the author of the reports that were submitted to RMS for payment.

It was submitted that Mr Thammiah was regularly at Mr Soliman's house between 2016 and 2018, and would prepare Novation documents on Mr Soliman's personal computer. A significant number of Novation documents, including scoping study reports, were located on Mr Soliman's computer; not because they were authored by Mr Soliman, but because they were included in a folder of documents transferred to Mr Soliman's computer by Mr Thammiah to enable him to prepare other Novation documents on Mr Soliman's computer. Mr Thammiah relied on Mr Soliman for motivation to do the work, rather than to provide the content of the work.

It was further submitted that, although some of Mr Thammiah's work practices were "not ideal" in that he cut corners and had assistance from Mr Soliman that should not have been provided, this does not mean that Mr Thammiah did not do the work requested of him by RMS in relation to the scoping study reports. It was submitted that no corrupt conduct finding should be made against Mr Thammiah because he substantially completed the work that was required under the scoping studies and he did not have an agreement with Mr Soliman that he would submit invoices to RMS for work he had not done.

The Commission rejects these submissions for the reasons set out in chapters 2 and 3 of this report.

### **Novation's prospectus**

The effect of the submissions in relation to Novation's prospectus, which was provided by Mr Thammiah to IRD in August 2016, was that, although it did contain some incorrect information, it was not a document full of lies and misrepresentations about Novation's experience and competencies. Mr Thammiah's expectation, in any event, was that Mr Malhotra would come back to him with further questions following review of the document, as occurred.

The Commission rejects this submission. As set out in chapter 4, not only was the prospectus document false and misleading in material particulars, when Mr Malhotra asked questions about Novation's projects with RMS and Novation's capabilities, Mr Thammiah responded with further untruthful information about the company's size, experience and competencies.

### **Spare parts invoicing**

It was submitted that, on the material provided to the Commission, it is not possible to determine specifically to what extent any parts ordered by Novation were not supplied. Counsel Assisting did not submit, and the Commission did not find, that there were parts ordered by Novation from IRD that were not supplied, or parts ordered by the maintainer from Novation (via RMS) that were not supplied.

The Commission rejects the overall submission on behalf of Mr Thammiah that he substantially supplied the parts invoiced for, or their close substitutes, and that he did not make any agreement with Mr Soliman to submit for payment by RMS invoices for parts which were not intended to be delivered.

Chapter 8 of this report sets out in detail a careful analysis of the evidence available to the Commission to enable it to be satisfied that there were parts charged by Novation on its invoices to RMS and paid for that were never supplied and that Mr Thammiah, in agreement with Mr Soliman, never intended to supply, including the “random” parts for which he invoiced to use up available funds on POs.

### The HVM panel

It was submitted that, regardless of any desire of Mr Soliman to favour Novation, the evaluation process and the determination of the TEC for the HVM panel “cannot be impugned” and that Novation was not favoured in its appointment to the panel.

This submission is rejected. Chapter 9 sets out the reasons that the Commission is satisfied that Novation was favoured by Mr Soliman in this tender process. The addition of “procurement” to the scope of services required for inclusion in category B of the panel ensured that Novation could be appointed notwithstanding it could not provide any maintenance services. Without the addition of the procurement requirement in the RFT documents, which the Commission is satisfied was effected by Mr Soliman, Novation could not have met any of the RFT’s requirements.

It was submitted that, at the time, Mr Thammiah believed it was acceptable for Mr Soliman to help him with Novation’s tender submission. The Commission rejects this submission. As set out in chapter 9, it is satisfied that Mr Thammiah’s suggestion that they switch to Wickr for anonymity was because he knew that Mr Soliman’s assistance with the tender submission was wrong, and that he wanted to avoid detection.

### Tender for 125 portable weigh scales

It was submitted that the fact that Novation quoted around \$15,000 per scale is of no import. The price of the scales and the profit margin achieved by Novation, if accepted, was its decision.

This submission ignores the evidence from the WhatsApp messages and Mr Thammiah’s own evidence in the public inquiry, as set out in chapter 11 of this report, that Mr Thammiah asked Mr Soliman the “price point” for his tender submission and Mr Soliman told him to charge \$15,000 per scale because that is what he had based the

funding request off. The price quoted by Novation was intended to exhaust the available budget of \$2 million for the first tranche of scales procurement, which was a budget improperly disclosed to Mr Thammiah by Mr Soliman.

It was submitted that the only conclusion available on the evidence is that Novation legitimately secured the tender for the provision of 125 scales. The Commission rejects this submission. Mr Thammiah himself agreed in evidence that the only reason he won the tender was because of his friendship with Mr Soliman. Chapter 11 of this report sets out the evidence that enables the Commission to be satisfied that Mr Soliman rigged the tender process in Novation’s favour and that Novation was ultimately the only possible choice for the evaluation committee and RMS, just as he had intended.

### Tender for 425 portable weigh scales

It was submitted that because RMS’s chief procurement officer advised that an open tender was not necessary to procure the second tranche of 425 scales given the existence of a panel that had been used to procure the first tranche of 125 scales, it is “difficult to say that the procurement process within RMS was in some way manipulated”.

The Commission rejects this submission. Mr Soliman’s wholesale manipulation of this RMS procurement process, including his misleading representations about the HVM panel constituting a “market scan” of portable scales, is addressed in chapter 12 of this report.

### The cash/loan payments to Mr Soliman

The principal submission on behalf of Mr Thammiah in relation to the cash payments he made to Mr Soliman was that he provided money to Mr Soliman on the expectation that Mr Soliman would repay it. It was not a quid pro quo for anything, except Mr Soliman’s friendship.

The Commission rejects this submission, which is addressed in detail in chapter 10 of this report.

It was also submitted that Mr Soliman lied to Mr Thammiah on a number of occasions during their WhatsApp communication for the purpose of seeking to make Mr Thammiah indebted to him, so that he could “opportunistically utilise Mr Thammiah as a pawn in his plans to exploit his position within RMS for personal gain”.

This submission is inconsistent with the submission that Mr Soliman was merely borrowing money from Mr Thammiah. Unless the arrangement was to share in the profits earned by Novation, as has been found by the Commission, Mr Soliman would not personally gain anything from exploiting his position within RMS to favour Novation.

As discussed in chapter 10, the Commission accepts that there are many examples in the WhatsApp messages during the procurement process for the 125 scales, of Mr Soliman exaggerating his authority and capacity to alter outcomes, and of lying to Mr Thammiah. The Commission accepts that Mr Soliman appeared to be trying to engender a sense of indebtedness on Mr Thammiah's part when doing so and that this often occurred just before he asked Mr Thammiah to withdraw cash for him.

It was submitted that there is insufficient evidence available to the Commission to find that the payments made by Mr Thammiah to Mr Soliman were connected with Novation's work with RMS other than temporally. It was submitted that to assert that Mr Thammiah intended, at the time these payments were made, for Mr Soliman to obtain a financial benefit as a result of him preferring Novation in relation to RMS work needs more than the transfer of monies between friends.

These submissions, which are addressed in chapter 10, are rejected by the Commission.

### **The scales supplied by Novation were the best product available**

One of the primary submissions made on Mr Thammiah's behalf, in his submissions in reply to Counsel Assisting's submissions and in his cross-party submissions, was that Novation won the two tenders to replace the entire RMS fleet of 550 portable weigh scales because it was supplying the best product. It was submitted that to emphasise the price difference in the IRD scales as being of concern "is like saying that buying a BMW was of concern when buying a Skoda could have done the job" and that, while more expensive, Novation's scale was justifiably so.

The Commission rejects this submission. It ignores the incontrovertible evidence set out in chapters 11 and 12 of this report, which satisfies the Commission that Mr Thammiah, in agreement with Mr Soliman and on the basis of confidential information he improperly provided about the available budget for the procurement of replacement scales, set Novation's price to exhaust the budget for each tender and maximise profit. The Commission had available to it IRD's wholesale price and the price charged by the previous NSW distributor of IRD scales and is satisfied that the significant mark-up applied by Novation was applied in the expectation that it would win the tenders irrespective of price because of Mr Thammiah's knowledge that Mr Soliman was improperly using his position in RMS to favour Novation.

## Appendix 4: Initiatives to address systems issues that have been implemented or are being progressed by TfNSW

In TfNSW's "Submissions in response to Corruption Prevention Submissions released by the Commission", TfNSW advised that it had implemented the following "sourcing initiatives":

1. Refinement of the non-compliance register:
  - a) the underlying data of the non-compliance register is distributed to agency procurement contacts in a variety of forms depending on their preference (that is, raw data, Tableau dashboard)
  - b) procurement staff utilise the data to determine if a deep dive review or investigation into non-compliance issues is required to determine if systemic issues exist.
2. Equip system alerts re non-compliant procurements:
  - a) financial approval of shopping carts is part of the oversight that ensures compliant procurements (a shopping cart may be rejected for a variety of reasons including non-compliance, and when this happens the requestor is notified)
  - b) reporting on rejected carts is possible, however, if notifications to an audience wider than the requestor is required, system changes would be necessary. The current initiative to enable upfront compliance checks into the approval workflow should address this issue. Once the request is approved and sourcing completed, TSS creates the PO and enters the compliance code, which forms the basis of compliance reporting already noted.
3. Training has been provided to WBS project managers on accessing budget information in Equip. This ensures WBS project managers have greater visibility over expenditure against WBS codes.

4. Manual Receipting (non-ARIBA vendor) Improvements:

- a) prompts are provided, including which documents are to be uploaded in the goods receipting part of Equip
- b) the required/mandatory fields for receipting via SRM confirmation and in ML81N are being reviewed. It is noted that there is no mandatory requirement for uploading attachments to the receipts but, in general, business users (depending on what the PO is for) would upload copies of signed timesheets, claims and invoices.

- i) SRM Confirmation, mandatory fields are:

- (1) Confirmation Name
- (2) Reference Document
- (3) Quantity (Confirmed Quantity)
- (4) Goods Recipient
- (5) Delivery Date cannot be a future date

- ii) Service Entry via ML81N (in ECC):

- (1) Short Text
- (2) Person Responsible Internally (PRsp. Intern.)
- (3) Reference
- (4) Service Selection (selecting the service line you want to receipt against)
- (5) Quantity
- (6) Document Date cannot be a future date.



5. Enhanced availability of relevant expertise to Compliance Branch, including:

a) finance business partners have been made available for each division, including the Compliance Branch. The finance business partners support each division in its budgeting processes and enhance their capacity to comply with the Investment Governance Framework and relevant NSW Treasury policies and circulars. The availability of such support, and the relevant policies and guidance material available through the RMS intranet page, serves to enhance the budgeting skills of divisions, including as to the ability to carry over capital expenditure budgets into the next financial year.

b) a dedicated procurement adviser for the Compliance Branch.

6. The Finance and Procurement team at TfNSW is currently progressing invoicing initiatives, including:

a) an order-splitting prevention initiative, in consultation with sourcing SMEs (this initiative will include identifying spend across the cluster by supplier and business unit)

b) a review of Labour Hire renewals and extensions by regional teams to ensure the correct supplier margin under SCM0007 is applied

c) compliance checks of professional service engagements against the SCM0005 Standard Commercial Framework

d) standard checks against policy for TSS-managed procurement

e) flagging of non-compliant procurement by TSS

- f) improvements in ongoing contract disclosure monitoring for the purpose of the *Government Information (Public Access) Act 2009* (NSW).

TfNSW has subsequently advised the Commission that it has begun working to address some of the recommendations proposed in the Corruption Prevention Submissions released by the Commission.

Below is a summary of actions that TfNSW has recently advised have “been completed or are currently being deployed”:

- development and deployment of a heavy vehicle asset register, which is maintained by the recently restructured Regulatory Operations Branch (formerly part of the RMS Compliance and Regulatory Services Division)
- commissioning of an independent internal audit by Deloitte into the procurement practices within the former RMS Compliance Monitoring Section of the Compliance and Regulatory Services Division
- implementation of a new Mandatory Training Framework to drive ethical culture, which includes the following modules:
  - “Living our code of conduct – mandatory training for all new starters and a refresher for all current staff”
  - “Professional ethics – mandatory refresher training every two years for non-frontline staff”
  - “Professional ethics for leaders – mandatory training for all new leaders”
  - “Professional ethics for leaders (refresher) – mandatory refresher training for leaders every two years”

- deployment of a vendor due diligence and vendor creation controls project, which has been funded and is in its discovery phase (funding has been obtained for this financial year to implement supplier risk modules as part of TfNSW's existing Ariba contract management system as part of this project)
- implementation of a TfNSW Goods and Services Procurement Standard in December 2020 to replace the previous TfNSW and RMS procurement frameworks (this new standard provides a consistent principles-based approach to procurement of goods and services across TfNSW)
- deployment of a new procurement analytics program, which was recently used to analyse PO volumes during Q1 FY21/22
- appointment of a Manager Procurement Process and Systems, and a Manager Procurement Strategy and Governance, who are accountable for ensuring procurement policies and systems are fit for purpose, understood and achieving their intended outcomes
- establishment of a team of dedicated procurement advisors who are responsible for assisting senior management plan and understand procurement activities in an ethical and effective manner.











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AGAINST CORRUPTION  
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